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CHARLES ELMORE CROPLEY

Supreme Court of the United States

October Term, 1941.

No. 951

STANDARD OIL COMPANY OF NEW JERSEY,

Petitioner,

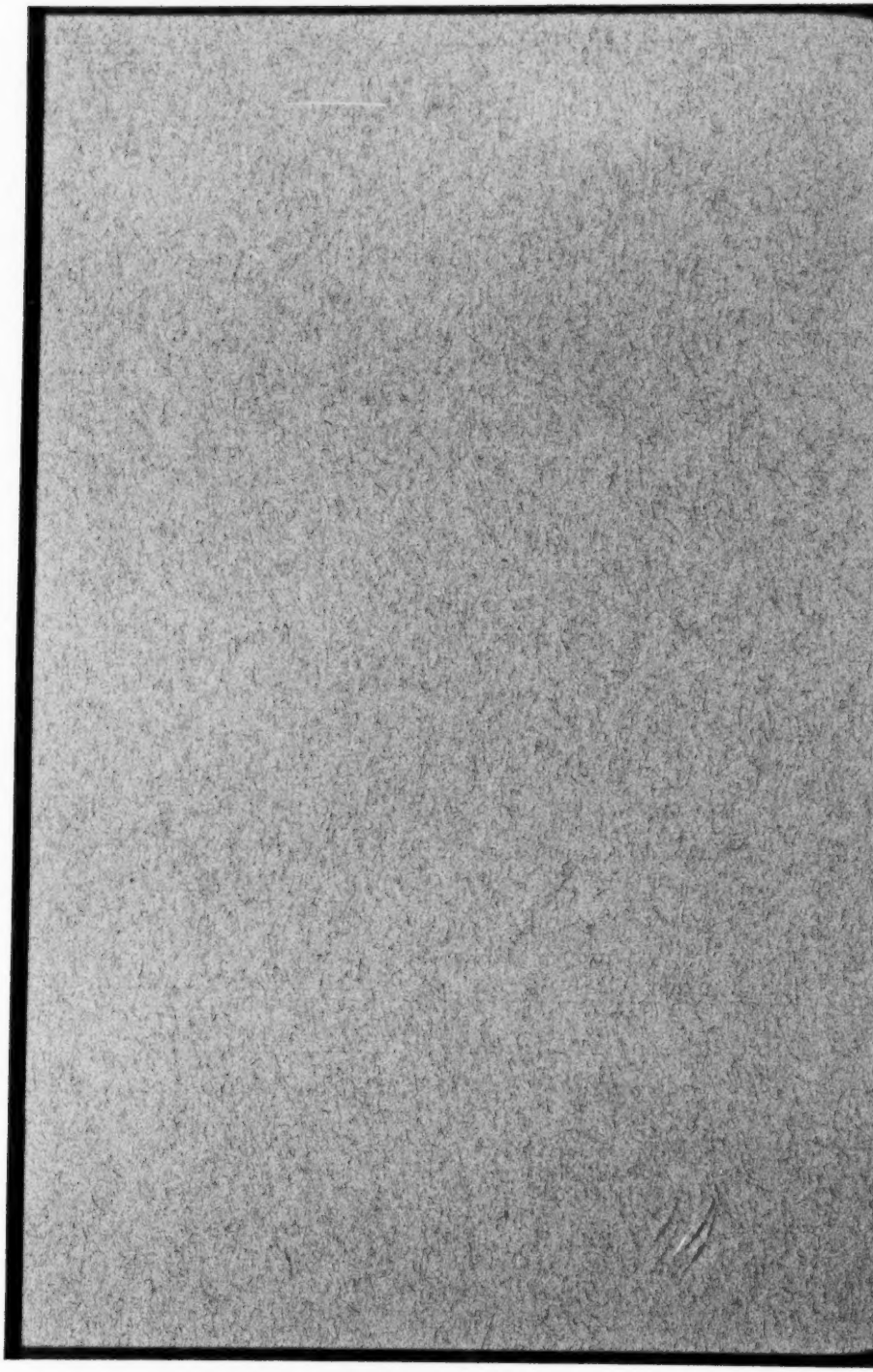
against

OLAF JOBGENSEN, JAMES J. [illegible], TAXPAYERS [illegible]

and OTHERS SIMILARLY [illegible]

PETITION FOR A WRIT OF [illegible]

WALTER [illegible]



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Supreme Court of the United States

OCTOBER TERM, 1941.

STANDARD OIL COMPANY OF NEW JERSEY, Petitioner, *against* OLAF JORGENSEN, JAMES J. SHEA, VASCO CANTOS and GUNNAR HANSON, Respondents.	No. .....

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, Standard Oil Company of New Jersey, prays that a writ of certiorari issue to the Municipal Court of the City of New York, Borough of Manhattan, First District, to review a final order of the Supreme Court of the State of New York, Appellate Division, First Department, entered October 10, 1941 (R. 99), affirming an order and determination of the Appellate Term of the Supreme Court entered December 18, 1940 (R. 91) which affirmed a judgment of the Municipal Court of the City of New York, Borough of Manhattan, First District, entered on May 3rd, 1940 in favor of respondents (R. 6). Remittitur of the Appellate Division was filed in the Municipal Court (R. 97). Leave to appeal to the Court of Appeals was denied by order of the Supreme Court of the State of New York, Appellate Division, First Department, entered November

14, 1941 (R. 98). The three months' period within which to file this petition commenced to run on this latter date. *American Railway Express Company* v. *Levee,* 263 U. S. 19.

JURISDICTION.

The jurisdiction of this court is provided by Title 28, U. S. Code, Section 344, subdivision (b).

The order of the Supreme Court of the State of New York, Appellate Division, First Department, affirming the order of the Appellate Term which affirmed the judgment of the Municipal Court of the City of New York, is a final order by the highest court of the State of New York in which a decision could be had in this case.

Because this suit originated in the Municipal Court of the City of New York, the right of appeal from the said Appellate Division to the Court of Appeals, which is the highest court of the state, is governed by the Civil Practice Act of the State of New York, Section 589 (1). This statute provides that there may be no appeal to the Court of Appeals of the State of New York in cases originating in any court other than the Supreme Court, County Court, Surrogate's Court and the Court of Claims, unless the Appellate Division of the Supreme Court of the State of New York allows an appeal by order on application and shall certify that in its opinion there are questions of law which the Court of Appeals ought to review.

There is no right to make application to the Court of Appeals for leave to appeal thereto. *Dored* v. *Wells,* 282 N. Y. 590; *Franklin Simon & Company* v. *Pease & Elliman, Inc.,* 262 N. Y. 693.

Application for leave to appeal to the Court of Appeals was duly made to the Appellate Division and denied. Hence petitioner has exhausted its remedies by appeal in the courts of the State of New York.

Statement of Facts.

The four respondents became members of the crew of the Steamship *W. C. Teagle* on October 17th, 1939 when they signed shipping articles at New York before a deputy United States Shipping Commissioner (R. 10, 33, 34, 35 and Defendant's Exhibit No. A).

The articles are a printed form, required by statute and prepared by the Department of Commerce, Bureau of Marine Inspection and Navigation, Shipping Service (Form 705-A, June 1939).

The pertinent part of the shipping articles reads as follows (R. 48, 86, Defendant's Exhibit A):

> "It is agreed between the Master and seamen or mariners of the S.S. *W. C. Teagle,* Wilmington, Delaware, of which F. Marcus is at present Master, or whoever shall go for Master, now bound from the port of New York, New York, to Cartagena, Columbia, Montreal, Canada, and such other ports and places in any part of the world as the master may direct and back to a final port of discharge in the United States for a term not exceeding twelve calendar months".

Before the expiration of one month the vessel arrived at Montreal, discharged her cargo, and with the permission of the United States Maritime Commission, she was sold to Panama Transport Company, a Panamanian Corporation (R. 36, 37, 68). The sale of the vessel took place on November 13, 1939 at Montreal where she was delivered to her new owners, her United States registry was changed to registry under the laws of Panama and the American flag was replaced with the flag of the Republic of Panama (R. 36, 68).

STATUTES INVOLVED.

Because the ship was sold at a foreign port, petitioner acted under Section 4582 of the Revised Statutes (46 U. S. C. 684) and did everything required by that section. Section 4582 reads as follows:

> "*Wages on discharge in case of sale.* Whenever a vessel of the United States is sold in a foreign country and her company discharged, it shall be the duty of the master to produce to the consular officer a certified list of the ship's company, and also the shipping articles, and besides paying to each seaman or apprentice the wages due him, he shall either provide him with adequate employment on board some other vessel bound to the port at which he was originally shipped, or to such other port as may be agreed upon by him, or furnish the means of sending him to such port, or provide him with a passage home, or deposit with the consular officer such a sum of money as is by the officer deemed sufficient to defray the expenses of his maintenance and passage home; and the consular officer shall indorse upon the agreement with the crew of the ship which the seaman or apprentice is leaving the particulars of any payment, provision, or deposit made under this section. A failure to comply with the provisions of this section shall render the owner liable to a fine of not exceeding $50 (R. S. §4582; June 26, 1884, c. 121, §5, 23 Stat. 54; Dec. 21, 1898, c. 28, §7, 30 Stat. 759).

Upon the sale of the vessel at Montreal the Master, officers and other members of the crew, including the respondents, were transported by rail with their personal effects to New York City where they had previously joined the vessel (R. 20, 21, 22, 23). The entire expense of their transportation, including Pullman accommodations and meals, was defrayed by petitioner (R. 21, 23). In addition

they received their wages in full to and including the day of their arrival in New York, November 14, 1939. Their wages were paid in the presence of a deputy United States Shipping Commissioner (R. 22, 23, 40-44). They had earned twenty-eight days' wages from October 17th, 1939 when they signed the articles to November 14, 1939 when they signed off, both dates inclusive.

In spite of the fact that petitioner fully complied with Section 4582, the respondents claim that each is entitled to one month's extra wages under Section 4527 of the Revised Statutes (46, U. S. Code §594) which is as follows:

> "*Right to wages in cases of improper discharge.* Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the court hearing the case, of having been improperly discharged, recover such compensation as if it were wages duly earned".

Petitioner contends that Section 4582 of the Revised Statutes is the only statute applicable. Furthermore, it contends that it complied with all the terms of the articles by returning the respondents to the port at which they had been engaged, with wages and subsistence until their arrival at that port.

The first contention brings into question the proper construction and application of Section 4527 and Section 4582 of the Revised Statutes.

The second contention raises the question of the proper construction of language in the shipping articles which

were required by Sections 4511, 4512 and 4612 of the Revised Statutes (46, U. S. Code, Sections 564, 565 and 713). The statutes provide in general what the terms of the articles shall be. They are required to be executed under the supervision of a United States Shipping Commissioner (Sections 4508 and 4512 of the Revised Statutes). The form of the articles is provided by the Commissioner and prepared by the Department of Commerce, Bureau of Marine Inspection and Navigation, Shipping Service. The language to be construed is a phrase in a printed portion of the form, reading as follows:

> "and back to a final port of discharge in the United States."

The articles were marked in evidence at the trial as Defendant's Exhibit A, and also Plaintiff's Exhibit No. 1 (R. 10, 34, 35, 48). This exhibit has been submitted to this Court. For the convenience of the Justices a blank form is appended to this petition.

The Action in the State Courts.

The pleadings in the Municipal Court were in the short form authorized by the Municipal Court Code (R. 4, 5). Accordingly they do not fully reflect the actual issues. However respondent's proof established *prima facie* a right of recovery pursuant to Section 4527. Other proof showed that petitioner fulfilled the requirements of Section 4582 and showed that respondents were brought "back to a final port of discharge in the United States."

At the end of the trial a motion was made on behalf of petitioner to dismiss the complaint (1) on the ground that petitioner fulfilled the terms of the contract (R. 72, 73, 74) and (2) on the ground that the application of Section 4527

was excluded by Section 4582, with which petitioner had complied (R. 74, 75, 76, 72).

On April 26th, 1940 the trial court rendered its decision without opinion (R. 7). Judgment was entered thereon on May 3rd, 1940 (R. 6). In granting judgment for the respondents the court necessarily held that Section 4527 was applicable and thereby decided against petitioner's contention that Section 4582 was exclusively applicable in the circumstances. Necessarily the court also ruled that petitioner had not fulfilled the terms of the contract. The judgment of the Municipal Court has been affirmed on appeal by both the Appellate Term (R. 91) and Appellate Division (R. 99) of the Supreme Court of the State of New York. No opinion was written in any of the State Courts.

Accordingly the state courts have decided two federal questions of substance not heretofore determined by this Court.

The question of the interpretation of Sections 4527 and 4582 is substantial because it will affect not only the rights of the respondents but about thirty former members of the same crew and many other seamen and shipowners similarly situated. It will be demonstrated hereafter that Section 4527 should not have been applied in the circumstances presented here.

The question of the proper interpretation of the language of the articles is substantial because the form provided by the government must be used on all foreign voyages and the exigencies of the trade and world conditions frequently prevent the return of a vessel to ports of the United States in which event it is important to seamen and shipowners alike to know whether a shipowner fulfills its duty to seamen by returning them overland or by some other means to a proper port in the United States even though they are not returned on the vessel.

The Questions Presented.

1. In addition to complying with Section 4582 of the Revised Statutes is a shipowner obligated to pay each member of the crew one month's extra wages pursuant to Section 4527 of the Revised Statutes, if a vessel is sold at a foreign port before the seamen have earned one month's wages?

2. If, after the sale of a vessel in a foreign port, a shipowner returns the seamen by rail to the United States port at which they were engaged, paying their wages and subsistence to and including the day of arrival, is this not a fulfillment of the provision in shipping articles prepared by the Department of Commerce describing the termination of a voyage as "back to a final port of discharge in the United States", so as to preclude the application of Section 4527 of the Revised Statutes?

The Reasons for Granting the Writ.

1. The foregoing facts are not disputed.

2. The courts below have held that petitioner "improperly" discharged respondents within the meaning of Section 4527 of the Revised Statutes, although admittedly petitioner discharged them in compliance with the requirements of Section 4582 of the Revised Statutes.

The legislative history of these statutes demonstrates that Congress did not intend that Section 4527 apply in circumstances where Section 4582 specifically applied, as here.

Although this court considered and interpreted Section 4527 in *The Steel Trader,* 275 U. S. 388, the relation of this

statute to Section 4582 and the application of both to circumstances here presented has never been considered by this or any other court except those below.

3. This petitioner was confronted by a similar suit in the United States District Court for the District of Maryland when it sold a vessel at Halifax and, as here, returned the crew by rail to the port of their engagement. *Johnson* v. *Standard Oil Company of New Jersey,* 33 F. Supp. 982. In that case it was held properly that Section 4527 did not apply to coastwise voyages such as there involved. However, the seaman contended also that if Section 4527 did not apply, he was entitled to damages for breach of contract. The court overruled this contention, saying: "But I find no breach". In other words the court held that it was a fulfillment of the articles to return the seaman to a United States port even though the vessel was sold and did not return. The articles contained a provision regarding the termination of the voyage identical with the provision in the articles in this case.

Thus this petitioner has been subject to conflicting holdings in this and the *Johnson* case, *supra,* on identical facts. Unless this conflict is resolved shipowners will be subject to conflicting rules of liability depending on the selection by a seaman of a favorable forum.

This Court has pointed out the necessity for uniformity in maritime law and has held unconstitutional state statutes which impair such uniformity. *Southern Pacific Co.* v. *Jensen,* 244 U. S. 245. It is submitted that it is no less necessary that there be uniformity in the interpretation of maritime contracts prepared by the government and in universal use on foreign voyages, and in general, though optional, use on coastwise voyages. It is of importance to shipowner

and seamen alike. And the question is one never before presented to this Court.

WHEREFORE your petitioner respectfully prays that review by writ of certiorari be allowed.

Respectfully submitted,

STANDARD OIL COMPANY OF NEW JERSEY,

By VERNON S. JONES,
Attorney of Record.

WALTER P. HICKEY,
Of Counsel.

Dated, New York, February 13, 1942.

I hereby certify that I have examined the foregoing petition, and in my opinion it is well founded and entitled to the favorable consideration of the Court, and that it is not filed for the purpose of delay.

VERNON S. JONES.

Supreme Court of the United States

OCTOBER TERM, 1941.

STANDARD OIL COMPANY OF NEW JERSEY,
Petitioner,

against

OLAF JORGENSEN, JAMES J. SHEA, VASCO CANTOS and GUNNAR HANSON,
Respondents.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

Reference has been made in the petition to the jurisdictional provisions and the proceedings in the state courts. The facts have been stated in the petition.

The suit is based on a supposed right to recover one month's extra wages pursuant to Section 4527 of the Revised Statutes. The petitioner contends that the statute on which respondents rely is not applicable.

A. THE LEGISLATIVE HISTORY OF SECTION 4527 OF THE REVISED STATUTES SHOWS THAT IT IS NOT APPLICABLE.

When one considers the legislative background into which Section 4527 was enacted it becomes apparent that there was no intention on the part of Congress that it should apply to cases already provided for by Section 4582.

From time to time Congress has made elaborate provisions concerning the discharge of seamen and payment of

their wages, particularly in foreign ports. One of the earliest of such provisions was the Act of February 28, 1803, c. 9, §3, 2 Stat. 203. This statute was amended several times and is now Section 4582 of the Revised Statutes (U. S. Code, Title 46, §684).

Originally it provided that upon the discharge of a seaman in a foreign port, either because the vessel was sold, or, if not sold, the seaman had consented to his discharge, the master was obliged to deliver to the Consul three months' extra wages for such seaman, two-thirds of which was payable to the seaman for his subsistence and passage home, and the remaining third to be applied by the Consul to a fund for the care of destitute American seamen.

By further enactments, masters and shipowners were obliged to deliver three months' extra wages to Consuls in the same manner and for the same purposes where seamen were discharged abroad because the vessel had put to sea badly provisioned or in an unseaworthy condition, Act of July 20, 1840 c. 48, 5 Stat. 396; because the voyage was purposely and unnecessarily prolonged beyond the agreed time, Act of July 20, 1840, c. 48, Sec. 9, 5 Stat. 395; and because a seaman was entitled to his discharge pursuant to any Act of Congress or principle or usage of maritime law, Act of August 18, 1856, c. 127, Sec. 26, 11 Stat. 62.

The apparent purpose of these statutes was to prevent stranding and destitution of seamen when discharged in a foreign port and to fix a liquidated measure of compensation payable immediately. (Conventional damages.)

Into this pattern of the law, Congress enacted the Act of June 7, 1872, c. 322, Sec. 21, which later became Section 4527 of the Revised Statutes (Section 594, Title 46, U. S. Code). It provided a liquidated measure of compensation (one month's extra wages) in cases where a seaman's con-

tract was breached before one month's wages were earned. *The Steel Trader*, 275 U. S. 388.

In 1874 the Act of June 7, 1872, c. 322, Sec. 21, became Section 4527 of the Revised Statutes. The Act of February 28, 1803, c. 9, Sec. 3, became Section 4582 of the Revised Statutes.

Later, in 1884, Section 4582 was changed by reducing the requirement to pay three months' extra wages to one month's extra wages. Act of June 26, 1884, c. 121, Sec. 5, 23 Stat. 54. (The same change was made in all the statutes requiring the payment of three months' extra wages.) Still later, in 1898, the extra wage provision was abandoned altogether but a provision was substituted requiring the master to provide the seaman with other employment, or, pay his passage home. Act of December 21, 1898, c. 28, Sec. 17.

Thus for twelve years (1872-1884) Section 4582 and Section 4527 of the Revised Statutes stood side by side on the statute books, the one giving a seaman three months' extra wages where a vessel was sold in a foreign port, and the other, one month's extra wages where the seaman was discharged improperly before one month's wages had been earned.

Thereafter for fourteen years further (1884-1898) these statutes stood side by side but for this period both statutes provided for the payment of one month's extra wages. Since 1898 instead of requiring the payment of one month's extra wages on the sale of a vessel in a foreign port, a different obligation has been imposed. Since then the master has been required instead, to provide a seaman with other employment, or, pay his passage home.

In considering whether it was the intention of Congress that both these statutes apply in the same case, the question must be answered as it would have been when Section 4527 was first enacted. In other words, if the seamen in the

present case are correct in their contention and had this case arisen between 1872 and 1884, they would have been entitled to an extra month's wages pursuant to Section 4527 after recovering three months' wages pursuant to Section 4582. This would amount to four months' extra wages in addition to the wages they had earned for 28 days' work.

It is not reasonable to suppose that it was the intention of Congress in 1872 when it enacted Section 4527 that this result should obtain. It is more unreasonable to assume that Congress intended that two statutes providing for a liquidated measure of compensation should apply cumulatively in the same case. Indeed if seamen had ever supposed that Congress had any such intention they would have sought this double recovery long ago. Yet no such case has appeared before the present one.

Other anomalies will result if both sections are applied in the same case. For example, under Section 4582 in its present form, the master has the alternative of providing a seaman with other employment. In a case where a master provides a seaman with other employment, will it be said that Congress intended that he should also be entitled to one month's extra wages under Section 4527?

Further evidence of the Congressional intent is found in the history of the legislation. The Act of June 7th, 1872 c. 322, of which Section 4527 is a part, dealt primarily with the establishing of Shipping Commissioners in domestic ports of the United States who were to oversee the shipping and discharging of seamen in domestic ports.

These regulations were new for the most part and were not modifications of preexisting regulations. In fact, in

opening the discussions in the House of Representatives, Mr. Conger, who was in charge of the bill, said:

> "* * * The object of the bill, as indicated in its title, is to protect seamen by legal regulations as to the mode of their shipping and discharge, in lack of any laws now existing on the subject. The bill is substantially the shipping commissioner's act of England (The British Merchant Shipping Act of 1854), with such changes as have been deemed necessary to adapt it to this country." Congressional Globe of March 20th, 1872, page 1836. [Matter in parentheses not in original text.]

During the passage of the Bill through Congress, the particular section, §21 (R. S. 4527) was not specifically discussed. There is nothing else in the discussions in Congress which points specifically to the purpose of the Bill. In the absence of anything to the contrary the language of Mr. Conger "in lack of any laws now existing on the subject" implies that Congress was attempting to make new laws where none previously existed. Bearing in mind that the discharge of seamen in foreign ports was already amply provided for, and particularly cases where a vessel was sold in a foreign port, the conclusion is inescapable that Congress had no thought that Section 4527 was to apply to such discharges in foreign ports.

With respect to a seaman's rights on the sale of a vessel in a foreign port there was no "lack of any laws now existing on the subject".

In an examination of all the cases which have dealt with Section 4527, none is found in which that section was invoked in a case of discharge in a foreign port.

Respondents have made the contention in the Courts below that Section 4582 and Section 4527 are compatible

on the theory that the first applies only to cases where a seaman has consented to his discharge and the latter to cases in which he did not consent. Two cases were cited to support the contention that Section 4582 applied only to cases where the seaman consented. *Pool* v. *Welsh*, Fed. Cas. No. 11269 (1830) and *Heynsohn* v. *Merriman*, 1 Fed. 728 (1880). Respondents omitted to point out that these cases were decided under Section 4582 is its earlier form. By its terms when originally enacted (Act of February 28, 1803, c. 9, Sec. 3, 2 Stat. 203) it applied in either of two circumstances, viz.:

(1) When a vessel was *sold* in a foreign port, or

(2) When a seaman was discharged in a foreign port *with his consent.*

The *Heynsohn* case, *supra,* was not a case where the vessel was sold, nor a case where the seaman was discharged with his consent. For these reasons the Court refused to apply the statute.

The headnote to the *Pool* case, *supra,* is misleading. An analysis of the decision reveals that the seamen in that case were discharged *against their will* when the vessel was sold abroad and they recovered pursuant to Section 4582, as it then stood. The issue was whether the sale of the vessel was "voluntary" on the part of the master or because of "unavoidable necessity," in which latter event it was urged that the statute did not apply. The Court found that the sale of the vessel was "voluntary" and therefore applied the statute.

In any event the provision "with his own consent" is now deleted from the statute and, by its terms, it now applies only when a vessel is sold in a foreign port.

B. SECTION 4582 OF THE REVISED STATUTES IS SPECIFIC LEGISLATION WHICH EXCLUDES THE APPLICATION OF SECTION 4527 WHICH IS GENERAL IN ITS TERMS.

Familiar principles of statutory construction require that specific legislation be given effect over the general. Section 4582 refers specifically to a case where a vessel is sold in a foreign port and the crew discharged. There is nothing in the language of Section 4527 which directs its provisions specifically to such a case. Consequently Section 4582 should be considered as constituting an exception to the application of Section 4527.

In *Washington* v. *Miller,* 235 U. S. 422 at 428, this Court said:

> "* * * where there are two statutes upon the same subject, the earlier being special and the later general, the presumption is, in the absence of an express repeal, or an absolute incompatibility, that the special is intended to remain in force as an exception to the general, *Townsend* v. *Little,* 109 U. S. 504, 512; *Ex parte Crow Dog, Id.* 556, 570; *Rodgers* v. *United States,* 185 U. S. 83, 87-89".

In *Pillsbury Flour Mills Co.* v. *Great Northern Ry. Co.,* 25 F. (2d) 66 at 68 and 69 the Circuit Court Appeals, Eighth Circuit, said:

> "Is it an elementary rule of statutory construction that general and specific provisions in apparent contradiction may subsist together—the specific qualifying and supplying exceptions to the general. Sutherland on Statutory Construction (2d Ed.) §348; *Townsend* v. *Little,* 109 U. S. 504, 512, 3 S. Ct. 357, 27 L. Ed. 1012; *Kepner* v. *United States,* 195 U. S. 100, 125, 24 S. Ct. 797, 49 L. Ed. 114, 1 Ann. Cas. 655; *Anchor Oil Co.* v. *Gray,* 257 F. 277, 283 (C. C. A. 8)."

See also *Ginsberg & Sons* v. *Popkin,* 285 U. S. 204, 208, and *Kepner* v. *United States,* 195 U. S. 100, 125.

C. SECTION 4527 OF THE REVISED STATUTES IS NOT APPLICABLE BECAUSE THE PETITIONER FULFILLED ITS CONTRACT WITH THE RESPONDENTS.

The voyage was completed as far as Montreal. There is nothing in the articles which required the vessel to proceed elsewhere. The only remaining provision unfulfilled was the matter of returning "to a final port of discharge in the United States".

If this provision was met by returning the seamen by rail to New York, the port at which they were engaged, the petitioner's undertaking with respondents was fulfilled. And although this occurred before the lapse of one month Section 4527 is not applicable because in this event there was no breach of contract or improper discharge. If the vessel had returned to New York in less than a month, it could not be successfully contended that respondents could recover under Section 4527.

On the other hand respondents contend that the contract was breached because the vessel itself did not return to a port of discharge in the United States.

In *Johnson* v. *Standard Oil Company of New Jersey,* 33 F. Supp. 982 (D. C.—D. Md.), this petitioner sold a vessel at Halifax and returned the crew to New York by rail. One of the seamen sued for damages for breach of contract and one month's extra wages pursuant to Section 4527.

The voyage involved in that case was a coastwise voyage and accordingly the Court held that Section 4527 did not apply. But the seaman contended that, if the statute did

not apply, he was entitled to damages for breach of contract. The Court denied this claim saying at page 984:

> "Libelant's counsel asserts that even though there is no statutory provision for the allowance of the extra wages, libelant is nevertheless entitled thereto, because respondent has breached the terms of employment. But I find no breach".

The articles in question in the *Johnson* case, *supra,* contained the same provision regarding the termination of the voyage. The finding by the court that there was no breach is a clear ruling that the provision "back to a final port of discharge in the United States" is fulfilled by returning a seaman overland to a proper port, paying his wages while en route and the expenses of his transportation.

On the other hand no case has been found to support the contention of the respondents. It is submitted that there is no logic by which a seaman can complain that his vessel did not return to a United States port, when he himself has been returned to proper port without expense and with wages during the time of his transportation. Indeed Section 4582 sanctions the sale of a vessel at a foreign port.

D. Review by certiorari should be allowed.

Respectfully submitted,

Vernon S. Jones,
Counsel for Petitioner.

Walter P. Hickey,
of Counsel.

Form 705-B
(June 1939)

SHIPPING ARTICLES

(R. S. 4612, as amended—U. S. C., title 46, sec. 713)

Notice is hereby given that section 4519 of the U. S. Revised Statutes (U. S. C., title 46, sec. 577) makes it obligatory on the part of the master, at the commencement of every voyage or engagement, to cause a legible copy of the agreement (forecastle card), omitting signatures, to be kept posted in the forecastle or other place accessible to the crew, under a penalty not exceeding ONE HUNDRED DOLLARS.

ARTICLES OF AGREEMENT BETWEEN MASTER AND SEAMEN IN THE MERCHANT SERVICE

Required by Act of Congress, Title LIII, Revised Statutes of the United States (U. S. C., title

NAME OF SHIP	OFFICIAL No.	PORT OF REGISTRY	DATE OF REGISTER

REGISTERED MANAGING OWNER OR MANAGER		
Name	Address (number of house, street and town)	(State

NUMBER OF SEAMEN AND APPRENTICES FOR WHICH ACCOMMODATION IS CERTIFIED

Office of the U. S. SHIPPING COMMISSIONER FOR THE PORT

IT IS AGREED between the Master and seamen, or mariners, of the _____

_____ *of which* _____

is at present Master, or whoever shall go for Master, now bound from the Port of [1] _____

_____

_____

and such other ports and places in any part of the world as the Master may direct, and back to a final port of discharge

C-3

C-4

DEPARTMENT OF COMMERCE
BUREAU OF MARINE INSPECTION
AND NAVIGATION
SHIPPING SERVICE

of the master of a merchant vessel of the United
atures, to be placed or posted up in such part of

CE OF THE UNITED STATES
46, chap. 18)

Registered Tonnage		Voyage No.
Gross	Net	

Class of Ship

T OF ....., 19....

....., to

ge in the United States, for a term of time not

C-5

Reference No.	SIGNATURE OF SEAMAN	Birthplace (If foreign-born, but naturalized, insert NAT. in parenthesis after country of birth)	Age	Height	
				Ft.	In.
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					

C-7

PARTICULARS OF ENGAGEMENT

Description		Number of Continuous Discharge Book or Certificate of Identification	Serial Number of License or Certificate	In What Capacity	Wa	
Complexion	Hair				Per month	

C-8

GES [1]		PLACE AND DATE OF SIGNING THIS AGREEMENT		TIME AT WHICH TO BE ON BOARD	MONTHLY ALLOTMENTS	
Rate per hour overtime		Place	Date		Amount	Payable to—

Address of Wife or Next of Kin	Conduct and Qualifications	Shipping Commissioner's Signature or Initials	Place, Date Leaving Ship: Place

C-11

PARTICULARS OF DISCHARGE

AND CAUSE OF OR OF DEATH		TIME OF SERVICE		WAGES EARNED						DEDUCTIONS	
Date	Cause	M	D	Regular Wage		Overtime		Total			

C-12

RELEASE

Balance of Wages Paid on Discharge	Date Wages Paid and Release Signed	We, the undersigned seamen, do hereby, each one for himself by our signatures herewith given in consideration of settlements made before the shipping commissioner, release the Master and owners from all claims for wages in respect of this voyage or engagement, and I, the Master, do also release each of the undersigned seamen from all claims, in consideration of this release signed by them. _____, Master.	Attestation of Shipping Commissioner	Reference No.
				1
				2
				3
				4
				5
				6
				7
				8
				9
				10

C-13

Offic

IT IS AGREED between the Master and seamen

is at present Master, or whoever shall go for Master, th

and such other ports and places in any part of the

exceeding _____ *calendar months.*

GOING ON SHORE I

NO DANG

SCALE OF PROVISIONS to be allowed and

		Sunday	Monday
Water	quarts	8	8
Biscuit	pound	½	½
Beef, salt	pounds		
Pork, salt	pound		1
Flour	pound	½	
Canned meat	pound	1	
Fresh bread	pounds	1½	1½
Fish, dry, preserved, or fresh	pound		
Potatoes or yams	pound	1	1
Canned tomatoes	pound	½	
Peas	pint		
Beans	pint		½
Rice	pint		½

One pound of flour daily may be substituted for the daily ration or two ounces of tapioca, for six ounces of rice; six ounces of canned of coffee for one-eighth of an ounce of tea; six ounces of canned fru pint of corn meal; two ounces of pickled onions for four ounces of fr

When the vessel is in port and it is possible to obtain the same, ration of canned tomatoes; one-half pound of fresh fruit for one rati

D-3

e of the U. S. SHIPPING COMMISSIONER FOR THE P

, *or mariners, of the* _____

_____ *of which* _____

ow bound from the Port of [1] _____

_____

_____

world as the Master may direct, and back to a final port of di

N FOREIGN PORTS IS PROHIBITED EXCEPT BY PERMISSIO

EROUS WEAPONS [1] OR GROG ALLOWED, AND NONE TO BE BROUGHT ON BOARD BY

erved out to the Crew during the voyage in addition to the daily issue of lime and lemon juice and sugar, v

Tues-day	Wednes-day	Thurs-day	Fri-day	Satur-day	
8	8	8	8	8	Coffee (green berry)
½	½	½	½	½	Tea
1½		1½		1½	Sugar
	1		1		Molasses
½		½			Dried fruit
	1				Pickles
1½	1½	1½	1½	1½	Vinegar
			1		Corn meal
1	1	1	1	1	Onions
			½		Lard
½			½		Butter
	½				Mustard, pepper, and salt sufficient for seasoning.
				½	

SUBSTITUTES

of biscuit or fresh bread; two ounces of desiccated vegetables for one pound of
d vegetables for one-half pound of canned tomatoes; one-eighth of an ounce of te
it for three ounces of dried fruit; one-half ounce of lime juice for the daily ratio
esh onions.

one and one-half pounds of fresh meat shall be substituted for the daily rations
ion of dried fruit. Fresh fruit and vegetables shall be served while in port if obt

PORT OF _____, 19____

_____, to

scharge in the United States, for a term of time not

ON OF THE MASTER

THE CREW

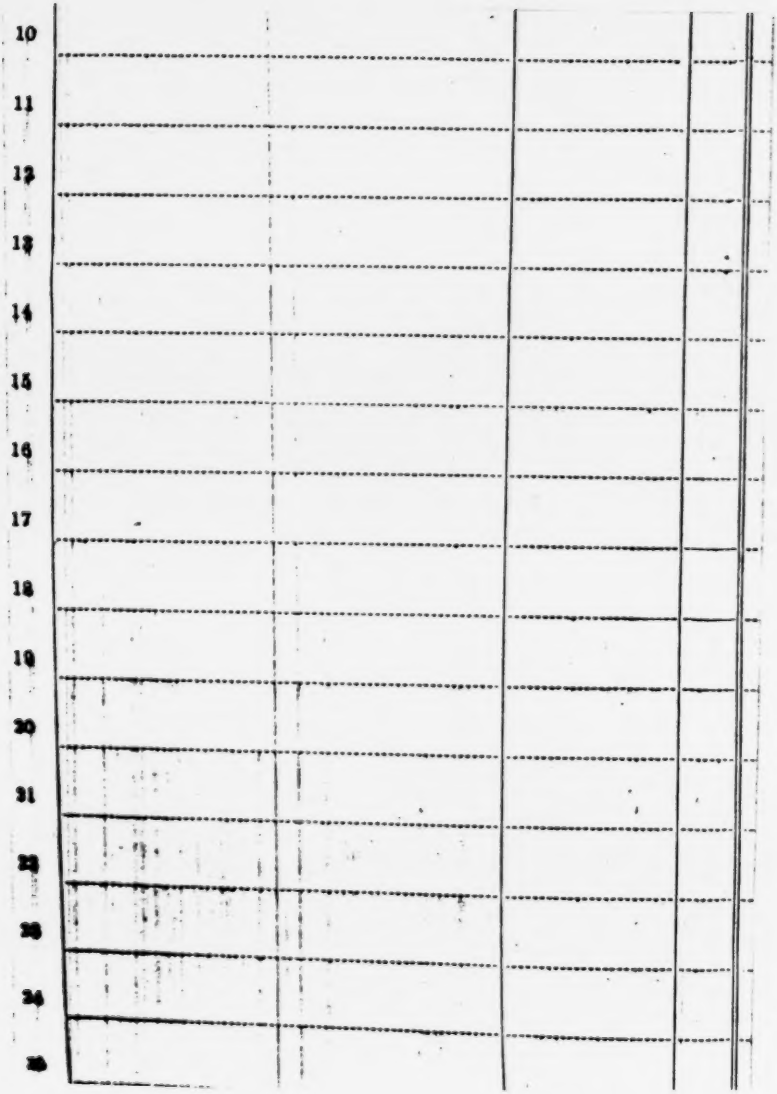
or other antiscorbutics in any case required by law

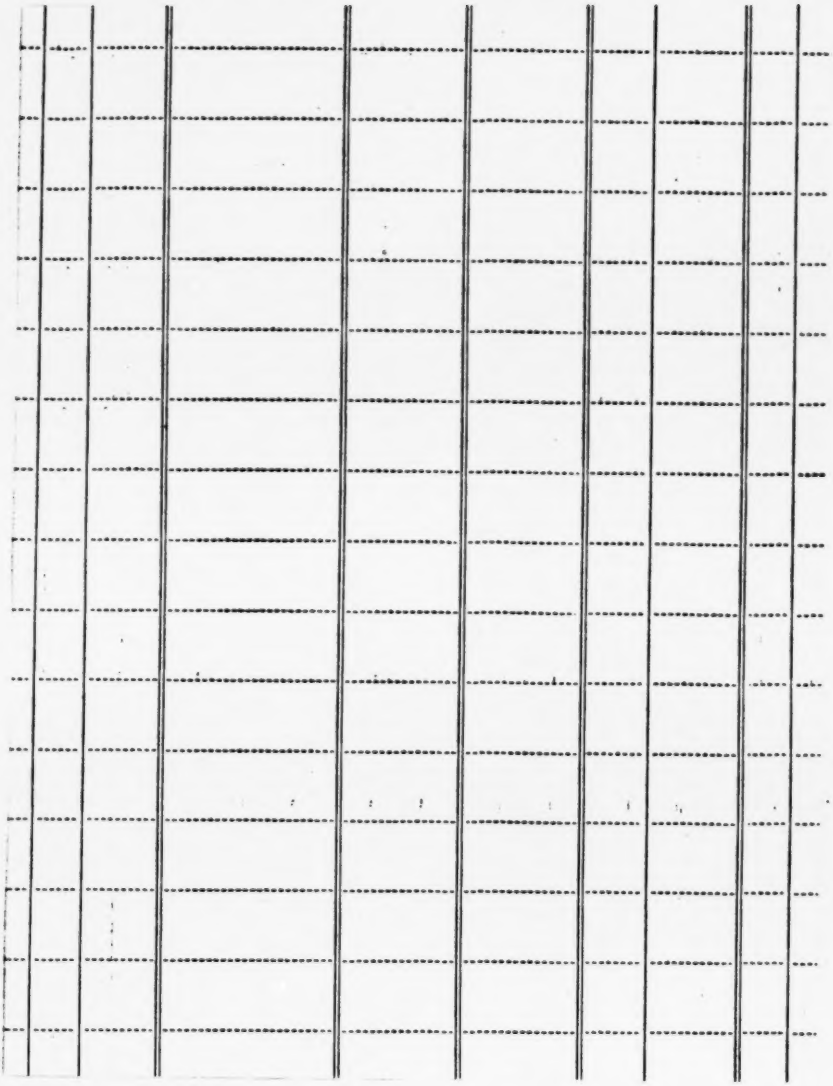
	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
ounce	½	½	½	½	½	½	½
ounce	½						
ounces	3	3	3	3	3	3	3
pint	½		½		½		
ounces	3		3		3		
pint		½		½		½	
pint			½				½
ounces	4				4		
ounces	4				4		4
ounce	1	1	1	1	1	1	1
ounce	½	½	½	½	½	½	½

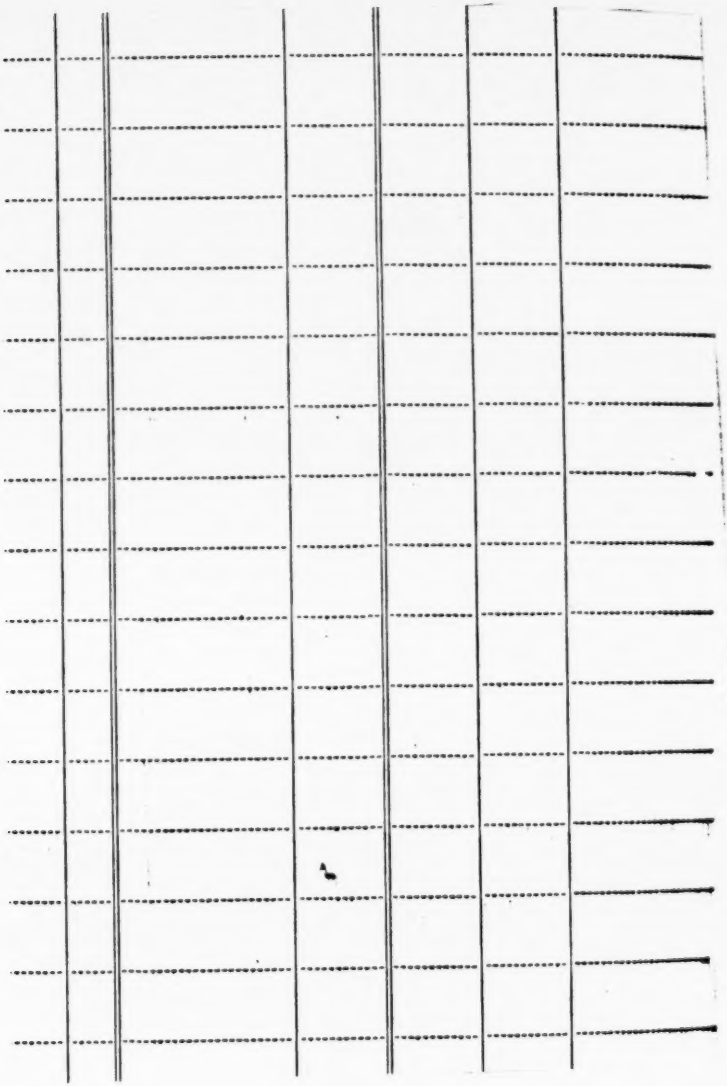
potatoes or yams; six ounces of hominy, oatmeal, or cracked wheat, ea for three-fourths of an ounce of coffee; three-fourths of an ounce n of vinegar; four ounces of oatmeal or cracked wheat for one-half

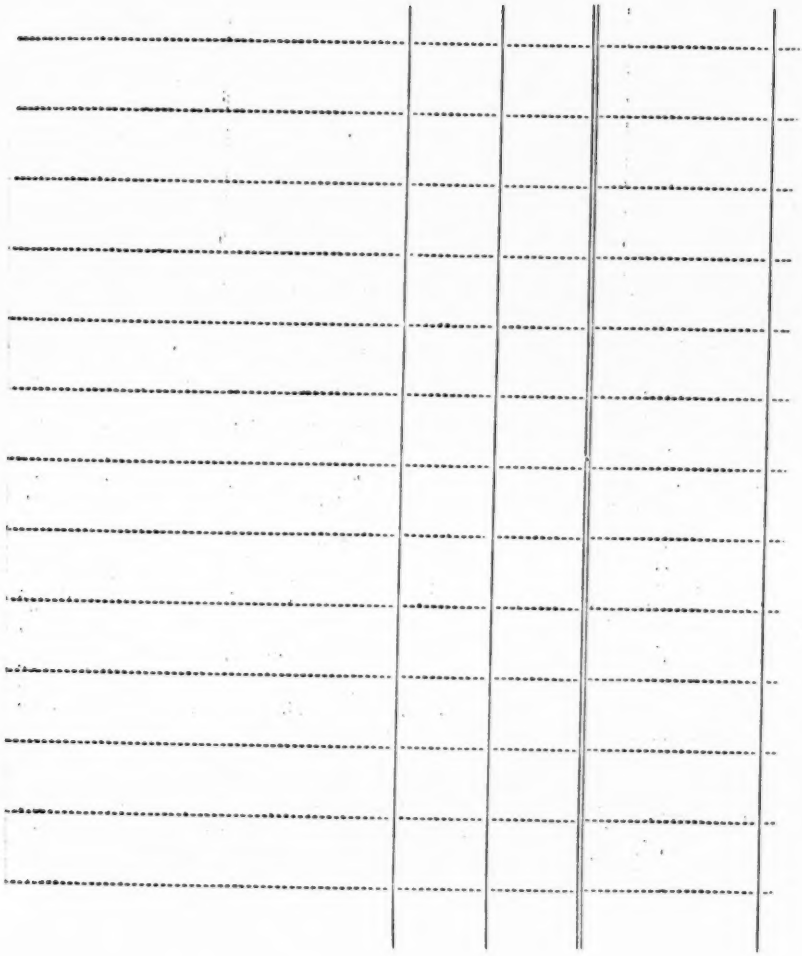
s of salt and canned meat; one-half pound of green cabbage for one ainable. The seamen shall have the option of accepting the fare the

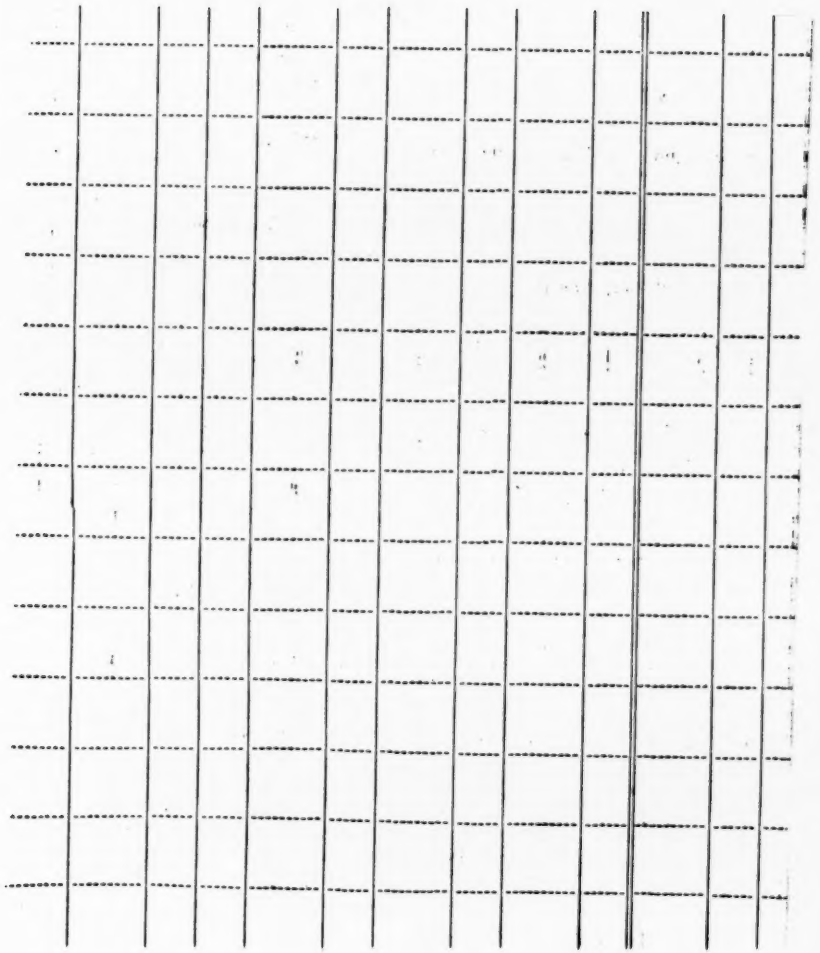
D-5

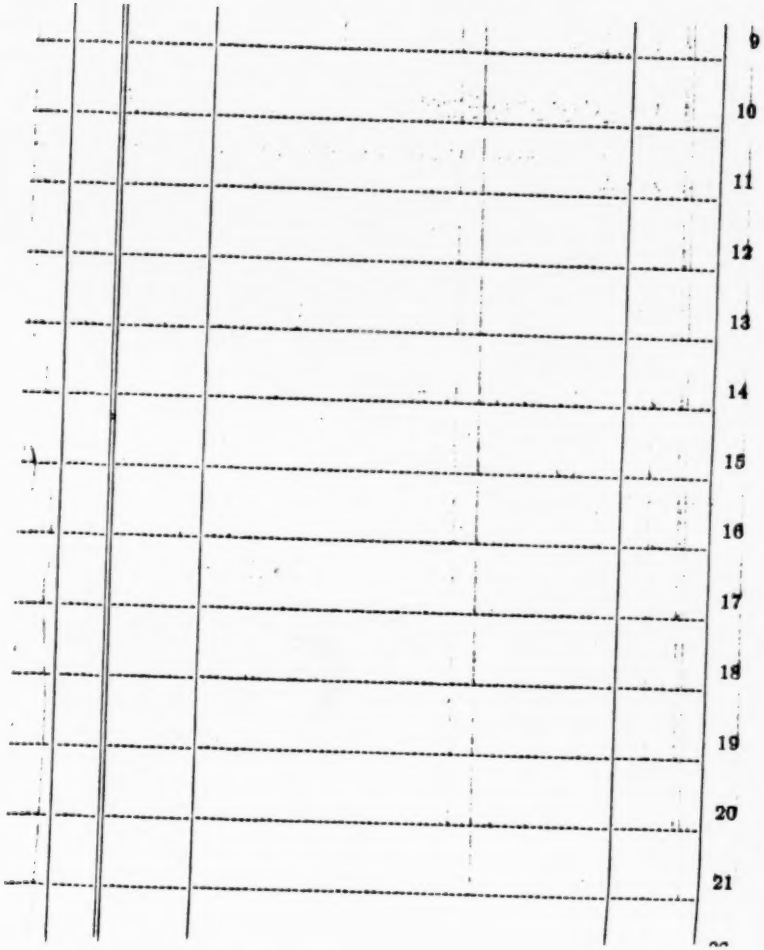








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21

One pound of flour daily may be substituted for the daily ratio or two ounces of tapioca, for six ounces of rice; six ounces of cann of coffee for one-eighth of an ounce of tea; six ounces of canned fr pint of corn meal; two ounces of pickled onions for four ounces of

When the vessel is in port and it is possible to obtain the sam ration of canned tomatoes; one-half pound of fresh fruit for one ra Master may provide, but the right at any time to demand the fores

The foregoing scale of provisions shall be inserted in every ar and in the forecastle of each vessel.

And the said crew agree to conduct themselves in an orderly, ter, or of any person who shall lawfully succeed him, and of their of which service to be duly performed the said Master hereby agr going scale. And it is hereby agreed, that any embezzlement or w same. And if any person enters himself as qualified for a duty wh of the crew considers himself to be aggrieved by any breach of the take such steps as the case may require.

It is also agreed that [4] _____

IN WITNESS WHEREOF the said parties he

—

on the ..... *day of* .....

The authority of the owner or agent for the allot

The Shipping Commissioner

[1] Here the voyage is to be described, and the places named at which the ship is t general nature and probable length of the voyage is to be stated, and the port or country a

[4] If these words are not necessary they must be stricken out.

N. B.—This form must not be unstitched. No leaves may be are engaged during the voyage than the number for whom signat

Any Erasure, Interlineation, or Alteration in this Ag

E-3

SUBSTITUTES

on of biscuit or fresh bread; two ounces of desiccated vegetables for one pound of
ed vegetables for one-half pound of canned tomatoes; one-eighth of an ounce of t
ruit for three ounces of dried fruit; one-half ounce of lime juice for the daily rati
fresh onions.
e, one and one-half pounds of fresh meat shall be substituted for the daily ration
ation of dried fruit. Fresh fruit and vegetables shall be served while in port if obt
going scale of provisions.
ticle of agreement, and shall not be reduced by any contract, except as above, and

faithful, honest, and sober manner, and to be at all times diligent in their respectiv
superior officers, in everything relating to the vessel, and the stores and cargo th
ees to pay to the said crew, as wages, the sums against their names respectively
rilful or negligent destruction of any part of the vessel's cargo or stores shall be
hich he proves himself incompetent to perform, his wages shall be reduced in prop
agreement or otherwise, he shall represent the same to the Master or officer in c

_____

_____

_____

_____

_____

_____

_____

_____

ve subscribed their names hereto on the days against their respe

_____, *Master, of* _

_____, *19*_____

ments mentioned in these articles is in my possession.

or Consular Officer will sign if such authority has been produced and w

o touch; or, if that cannot be done, the
t which the voyage is to terminate.

[3] Sec. 4608, R. S., prohibits t
[4] Here any other stipulations

taken out of it, and none added or substituted. Care should be taken at the ti
ures are provided in this form, an additional form should be obtained and used.

reement will be void, unless attested by a Shipping Commissioner, Con
the consent of the persons interested

E-4

potatoes or yams; six ounces of hominy, oatmeal, or cracked wheat, ea for three-fourths of an ounce of coffee; three-fourths of an ounce on of vinegar; four ounces of oatmeal or cracked wheat for one-half

s of salt and canned meat; one-half pound of green cabbage for one tainable. The seamen shall have the option of accepting the fare the

a copy of the same shall be posted in a conspicuous place in the galley

e duties, and to be obedient to the lawful commands of the said Mas- iereof, whether on board, in boats, or on shore; and in consideration expressed, and to supply them with provisions according to the fore- made good to the owner out of the wages of the person guilty of the ortion to his incompetency. And it is also agreed that if any member harge of the ship in a quiet and orderly manner, who shall thereupon

ctive signatures mentioned.

(Give address)

Shipping Commissioner or Consular Officer.

ill strike out in ink if it has not

be wearing of sheath knives on shipboard, and the Master informs the crew of this law.
may be inserted to which the parties agree, and which are not contrary to law.

me of engagement that a sufficiently large form is used. If more men

ul General, Consul, or Consular Agent, to be made with

22				
23				
24				
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28				
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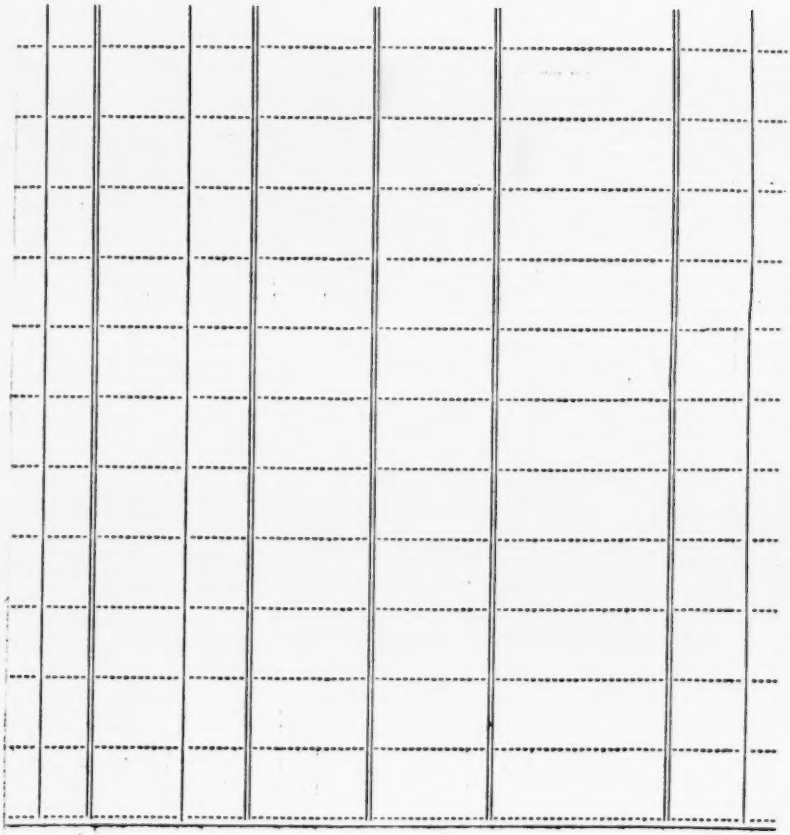
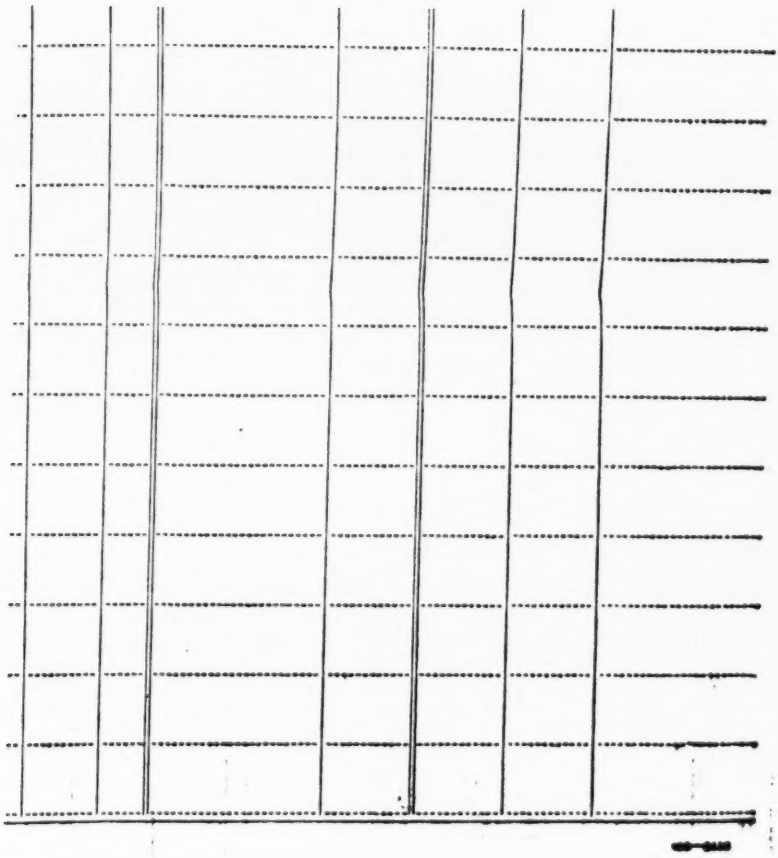
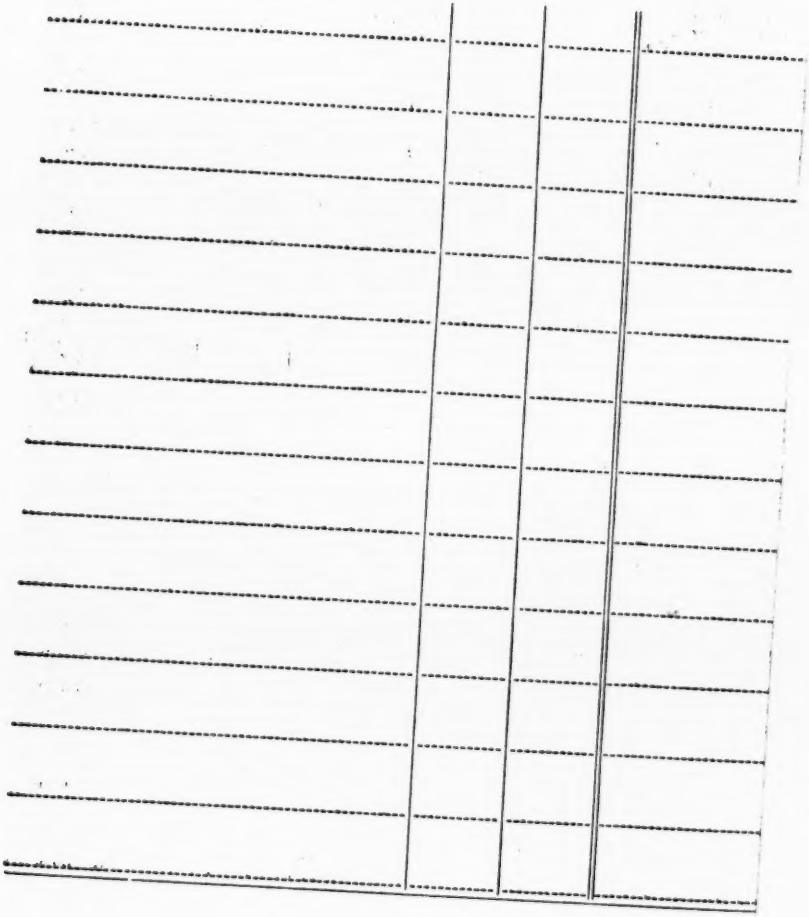
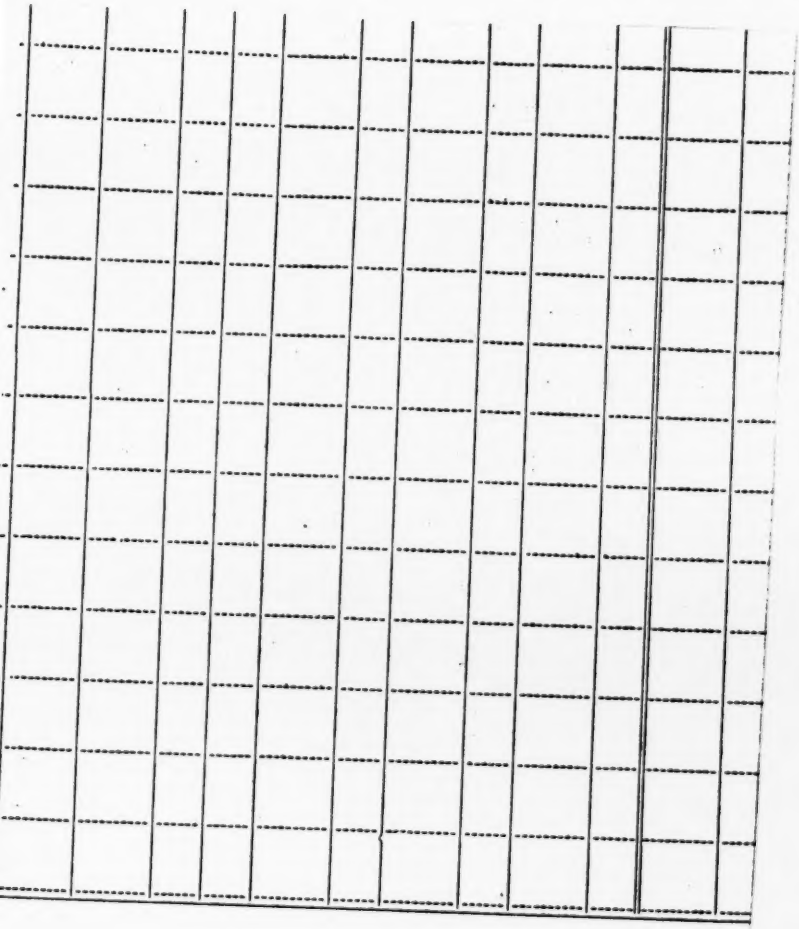
30				
31				
32				
33				

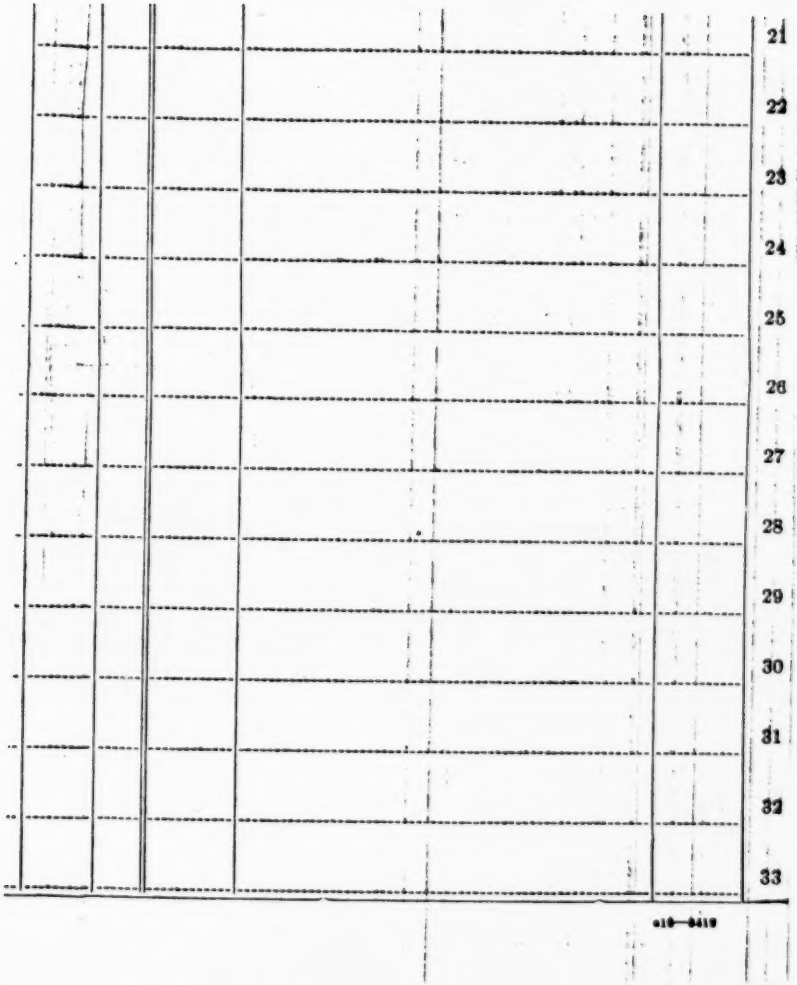
[1] Enter rate per month and rate per hour for overtime, as both items constitute wages.










21
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32
33

CERTIFICATES

Or Endorse

ments Made by Shipping Commissioners

I HEREBY CERTIFY that the entries in the Discharge Books of seamen i
applicable entries herein, or Certificates of Discharge have been issued in ac

ncluded in these articles agree with the
ordance therewith.

U. S. Shipping Commissioner.

CITIZENSHIP REQUIREMENTS (crew exclusive o

licensed officers)

	Subsidized Passenger Vessels	Subsidized	Cargo Vessels	Nonsubsidized Vessels
	90 percent shall be citizens of United States, either native-born or naturalized. Legally admitted aliens may comprise other 10 percent but may be employed in Steward's Department only.	On and after 100 percent States, either naturalized	r Sept. 27, 1936, citizens of United er native-born or	On and after Dec. 25, 1936, 75 percent citizens of United States, either native-born or naturalized.
	Number	*N*	*Number*	*Number*
Native-born citizens				
Naturalized citizens				
First papers				
Admissible aliens				
Percentage (American citizens)	%		%	%

I HEREBY CERTIFY that the above statement as to the citizenship of th
and correct.

crew signed on these articles is true

U. S. Shipping Commissioner.

FOREIGN

	Shipp
	Reshi
	Total
	Failec

Officers	
United States (native)	
United States (naturalised)	
Men	
United States (native)	
United States (naturalised)	
Austrian	
British	
Chinese	
Danish	
Dutch	
Filipino	
French	
German	
Italian	
Norwegian	
Portuguese	
Russian	
Spanish	
Swedish	
Central American	
South American	
Others	
TOTAL	

A-3

A-4

and Consuls

NEARBY	COASTWISE

ed.
pped.

to join.

DECK	ENGINE	STEWARDS	TOTAL

I HEREBY CERTIFY that the above statement as to the citizenship of th
and correct.

ATTENTION OF MAS

Agreement To Ship in Foreign Trade.

(R. S. 4511—46 U. S. C. 564) The master of every vessel bound from a p
port other than vessels engaged in trade between the United States and t
or the West India Islands, or the Republic of Mexico, or of any vessel of
ward, bound from a port on the Atlantic to a port on the Pacific, or vice
voyage, make an agreement, in writing, or in print, with every seaman wh
in the manner hereinafter mentioned:
(R. S. 4519—46 U. S. C. 577) The master shall, at the commencement of
legible copy of the agreement, omitting signatures, to be placed or poste
accessible to the crew; and on default shall be liable to a penalty of not n

Penalty for Shipment Without Agreement.

(R. S. 4514—46 U. S. C. 567) If any person shall be carried to sea, asone of
a voyage as hereinbefore specified (R. S. 4511) without entering into an ag
in the form and manner, and at the place and times in such cases require
such offense to a penalty of not more than $200. But the vessel shall not
sea, who shall have secretly stowed away himself without the knowledg
officers of the vessel, or who shall have falsely personated himself to the
for the purpose of being carried to sea.

Shipment in Foreign Ports Before Consuls.

(R. S. 4517—46 U. S. C. 570) Every master of a merchant vessel who en
United States, in which there is a consular officer, shall, before carrying s
of such officer and shall engage seamen in his presence; and the rules gover
shipping commissioner in the United States shall apply to such engagem
upon every such engagement the consular officer shall endorse upon the
attestation to the effect that the same has been signed in his presence an
(R. S. 4518—46 U. S. C. 571) Every master who engages any seaman in any
otherwise than as required by the preceding section shall incur a penalty o
the vessel shall be held liable.

Shipment of Seamen in the Coasting or Nearby Foreign Trade.

(June 19, 1886—Sec. 2—46 U. S. C. 646) Shipping commissioners may ship a
in the coastwise trade, or the trade between the United States and the
or the West Indies, or the Republic of Mexico, at the request of the mast

Watches—Hours of Labor—Legal Holidays.

(R. S. 4551—Sec. 2—46 U. S. C., Supp. IV 673) In all merchant vessels of the
tons gross, excepting those navigating rivers, harbors, lakes (other than C
canals, exclusively, the licensed officers and sailors, coal passers, firemen,
sea, be divided into at least three watches, which shall be kept on duty suc
work incident to the sailing and management of the vessel. No licensed
department of any tug documented under the laws of the United States
for fishing purposes) navigating the Great Lakes, harbors of the Great Lak
between Gary, Ind.; Duluth, Minn.; Niagara Falls, N. Y.; and Ogdensbu
to work more than eight hours in one day except in case of extraordinary em

ew signed on these articles is true

U. S. Shipping Commissioner.

Spanish	
Swedish	
Central American	
South American	
Others	
TOTAL	

RS ESPECIALLY INVITED TO THE FOLLOWING P

n the United States to any foreign
British North American possessions,
burden of seventy-five tons, or up-
s, shall, before he proceeds on such
he carries to sea as one of the crew,

ry voyage or engagement, cause a
in such part of the vessel as to be
than $100.

crew on board of any vessel making
ment with the master of such vessel,
e vessel shall be held liable for each
held liable for any person carried to
the master, mate, or of any of the
ster, mate, or officers of the vessel,

s any seaman at a place out of the
seaman to sea, procure the sanction
g the engagement of seamen before a
made before a consular officer, and
eement his sanction thereof, and an
herwise duly made.
ce in which there is a consular officer
t more than $100, for which penalty

lischarge crews for any vessel engaged
inion of Canada, or Newfoundland,
r owner of such vessel.

ited States of more than one hundred
t Lakes), bays, sounds, bayous, and
rs, and water tenders shall, while at
ively for the performance of ordinary
ficer or seaman in the deck or engine
cept boats or vessels used exclusively
and connecting and tributary waters
N. Y., shall be required or permitted
ency affecting the safety of the vessel

and each seaman, respectively, i
claims for wages in respect of the
attest it, and shall retain it in a b
such settlement, or the settlemen

(R. S. 4524—46 U. S. C. 591) A se
time at which he commences wo
presence on board, whichever firs
(R. S. 4530—46 U. S. C. 597) Ever
from the master of the vessel to
unpaid at the time when such de
menced, shall load or deliver carg
shall be void: *Provided*, Such a d
days nor more than once in the s
with this demand shall release the
And when the voyage is ended e
then due him, as provided in sec
release signed by any seaman unc
good cause shown set aside such r

Discharge in Foreign Trade.

(R. S. 4549—46 U. S. C. 641) All s
from a port in the United States t
port on the Atlantic to a port on t
of a duly authorized shipping co
petent court otherwise directs; s
belonging thereto, or pays his wa
not more than $50.
(R. S. 4551—Subsec. (d)—46 U. S.
wages, the shipping commissione
carries such a book, the name an
coastwise), the class to which the
and of the discharge of such sea
signature of the person making s
(R. S. 4551—Subsec. (e)—46 U. S.
case of seamen preferring the cer
Marine Inspection and Navigati
form as to specify the name and
of identification, the name and o
coastwise), the class to which the
and of the discharge of such sea
Records of service entered in eith
to the character or ability of the
make the proper entries therein,
master of the vessel and shall be
(R. S. 4551—Subsec. (k)—46 U. S.
crew before a shipping commissi

EQUIREMENTS OF LAW

h the presence of the shipping commissioner, shall sign a mutual release of all past voyage or engagement, and the shipping commissioner shall also sign and ook to be kept for that purpose, provided both the master and seaman assent to t has been adjusted by the shipping commissioner.

aman's right to wages and provisions shall be taken to commence either at the rk, or at the time specified in the agreement for his commencement of work or it happens.

y seaman on a vessel of the United States shall be entitled to receive on demand which he belongs one-half part of the balance of his wages earned and remaining mand is made at every port where such vessel, after the voyage has been com- o before the voyage is ended, and all stipulations in the contract to the contrary emand shall not be made before the expiration of, nor oftener than once in five me harbor on the same entry. Any failure on the part of the master to comply seaman from his contract and he shall be entitled to full payment of wages earned. very such seaman shall be entitled to the remainder of the wages which shall be tion 4529 of the Revised Statutes: *Provided further*, That notwithstanding any ler section 4552 of the Revised Statutes, any court having jurisdiction may upon elease and take such action as justice shall require.

amen discharged in the United States from merchant vessels engaged in voyages o any foreign port, or, being of the burden of seventy-five tons or upward, from a ne Pacific, or vice versa, shall be discharged and receive their wages in the presence mmissioner under this Title (R. S. 4501–4612), except in cases where some com- and any master or owner of any such vessel who discharges any such seaman ges within the United States in any other manner, shall be liable to a penalty of

C., Supp. IV 643 (d)) Upon the discharge of any seaman and the payment of his er shall enter in the continuous discharge book of such seaman, if the seaman l official number of the vessel, the nature of the voyage (foreign, intercoastal, or vessel belongs (steam, motor, sail, or barge), the date and place of the shipment nan, the rating (capacity in which employed) then held by such seaman, and the ch entries and nothing more.

C., Supp. IV 643 (e)) For the purpose of furnishing evidence of sea service in the tificate of identification instead of the continuous discharge book, the Bureau of ion shall provide a certificate of discharge, printed on durable paper, in such citizenship of the seaman to whom it is issued, the serial number of his certificate official number of the vessel, the nature of the voyage (foreign, intercoastal, or vessel belongs (steam, motor, sail, or barge), the date and place of the shipment man, and the rating (capacity in which employed) then held by such seaman. er continuous discharge books or certificates of discharge shall contain no reference seaman. The shipping commissioner shall issue such certificate of discharge and which certificate shall be signed by the seaman to whom it is issued and the witnessed by such shipping commissioner.

C., Supp. IV 643 (k)) Where vessels are required to sign on and discharge the

Shipment in Foreign Ports Before Consuls.

(R. S. 4517—46 U. S. C. 570) Every master of a merchant vessel who enga
United States, in which there is a consular officer, shall, before carrying suc
of such officer and shall engage seamen in his presence; and the rule govern
shipping commissioner in the United States shall apply to such engagemen
upon every such engagement the consular officer shall endorse upon the a
attestation to the effect that the same has been signed in his presence and
(R. S. 4518—46 U. S. C. 571) Every master who engages any seaman in any p
otherwise than as required by the preceding section shall incur a penalty of
the vessel shall be held liable.

Shipment of Seamen in the Coasting or Nearby Foreign Trade.

(June 19, 1886—Sec. 2—46 U. S. C. 646) Shipping commissioners may ship and
in the coastwise trade, or the trade between the United States and the D
or the West Indies, or the Republic of Mexico, at the request of the master

Watches—Hours of Labor—Legal Holidays.

(R. S. 4551—Sec. 2—46 U. S. C., Supp. IV 673) In all merchant vessels of the I
tons gross, excepting those navigating rivers, harbors, lakes (other than G
canals, exclusively, the licensed officers and sailors, coal passers, firemen, c
sea, be divided into at least three watches, which shall be kept on duty succe
work incident to the sailing and management of the vessel. No licensed
department of any tug documented under the laws of the United States (e
for fishing purposes) navigating the Great Lakes, harbors of the Great Lake
between Gary, Ind.; Duluth, Minn.; Niagara Falls, N. Y.; and Ogdensburg
to work more than eight hours in one day except in case of extraordinary eme
and/or life or property. The seamen shall not be shipped to work altern
shall those shipped for deck duty be required to work in the fireroom, or v
or seaman in the deck or engine department be required to work more thar
visions shall not limit either the authority of the master or other officer or t
judgment of the master or other officer the whole or any part of the crew
berth, mooring, or unmooring, the vessel or the performance of work nec
passengers, crew, and cargo, or for the saving of life aboard other vessels
from requiring the whole or any part of the crew to participate in the perf
While such vessel is in a safe harbor no seaman shall be required to do an
following-named days: New Year's Day, the Fourth of July, Labor Day, T
but this shall not prevent the dispatch of a vessel on regular schedule or
And at all times while such vessel is in a safe harbor, eight hours, inclusive
day's work. Whenever the master of any vessel shall fail to comply with
thereunder, the owner shall be liable to a penalty not to exceed $500, and t
from such vessel and to receive the wages earned. But this section shall
operations: *Provided*, That in all tugs and barges subject to this section wi
hundred miles, the licensed officers and members of crews other than coal p
may, while at sea, be divided into not less than two watches, but nothin
repealing any part of section 222 of this title. This section shall take effe
amended June 25, 1936, c. 816, 2, 49 Stat. 1938; June 23, 1938, c. 597, 52 S

Wages.

(R. S. 4552—46 U. S. C. 644) The following rules shall be observed with re
First. Upon the completion, before a shipping commissioner, of any disch

U. S. GOVERNMENT PRINTING OFFICE 913—8419

ges any seaman at a place out of the
h seaman to sea, procure the sanction
ing the engagement of seamen before a
its made before a consular officer, and
greement his sanction thereof, and an
otherwise duly made.
lace in which there is a consular officer
not more than $100, for which penalty

l discharge crews for any vessel engaged
ominion of Canada, or Newfoundland,
r or owner of such vessel.

United States of more than one hundred
reat Lakes), bays, sounds, bayous, and
ilers, and water tenders shall, while at
ssively for the performance of ordinary
officer or seaman in the deck or engine
xcept boats or vessels used exclusively
es, and connecting and tributary waters
g, N. Y., shall be required or permitted
rgency affecting the safety of the vessel
ately in the fireroom and on deck, nor
ice versa; nor shall any licensed officer
eight hours in one day; but these pro-
he obedience of the seamen when in the
w are needed for maneuvering, shifting
essary for the safety of the vessel, her
in jeopardy, or when in port or at sea,
ormance of fire, lifeboat, or other drills.
y unnecessary work on Sundays or the
Thanksgiving Day, and Christmas Day,
when ready to proceed on her voyage.
of the anchor watch, shall constitute a
n this section and the regulation issued
he seamen shall be entitled to discharge
not apply to vessels engaged in salvage
nen engaged on a voyage of less than six
assers, firemen, oilers, and water tenders
ng in this proviso shall be construed as
ot six months after June 25, 1936. (As
Stat. 944.)

spect to the settlement of wages:
rge and settlement, the master or owner

(R. S. 4549—46 U. S. C. 641) All seam
from a port in the United States to an
port on the Atlantic to a port on the P
of a duly authorized shipping commi
petent court otherwise directs; and
belonging thereto, or pays his wages
not more than $50.

(R. S. 4551—Subsec. (d)—46 U. S. C.,
wages, the shipping commissioner sh
carries such a book, the name and off
coastwise), the class to which the ves
and of the discharge of such seaman,
signature of the person making such

(R. S. 4551—Subsec. (e)—46 U. S. C.,
case of seamen preferring the certific
Marine Inspection and Navigation
form as to specify the name and citiz
of identification, the name and offic
coastwise), the class to which the ve
and of the discharge of such seama
Records of service entered in either c
to the character or ability of the sea
make the proper entries therein, wh
master of the vessel and shall be with

(R. S. 4551—Subsec. (k)—46 U. S. C.
crew before a shipping commissioner
duties required by subsections (d) a
performed by a collector or deputy c
the crew before a shipping commis
section to be performed by the shi
master who shall fail to perform such

Discharge in Foreign Ports.

(R. S. 4580—46 U. S. C. 682) Upon t
seaman, or upon the application of a
has completed his shipping agreeme
general principles or usages of mari
seaman, and require from the master
may then be due said seaman; but r
discharge of any seaman except as

Arbitration Before Shipping Com

(R. S. 4554—46 U. S. C. 651) Every
a master, consignee, agent, or owne
and every award so made by him sh
taken in the matter, before any cou
any document under the hand and
be prima facie evidence thereof.

ɜn discharged in the United States from merchant vessels engaged in voyages
y foreign port, or, being of the burden of seventy-five tons or upward, from a
acific, or vice versa, shall be discharged and receive their wages in the presence
ɜsioner under this Title (R. S. 4501–4612), except in cases where some com-
any master or owner of any such vessel who discharges any such seaman
within the United States in any other manner, shall be liable to a penalty of

Supp. IV 643 (d)) Upon the discharge of any seaman and the payment of his
ɔall enter in the continuous discharge book of such seaman, if the seaman
ficial number of the vessel, the nature of the voyage (foreign, intercoastal, or
ɜsel belongs (steam, motor, sail, or barge), the date and place of the shipment
the rating (capacity in which employed) then held by such seaman, and the
entries and nothing more.
Supp. IV 643 (e)) For the purpose of furnishing evidence of sea service in the
ɜate of identification instead of the continuous discharge book, the Bureau of
shall provide a certificate of discharge, printed on durable paper, in such
ɜenship of the seaman to whom it is issued, the serial number of his certificate
ial number of the vessel, the nature of the voyage (foreign, intercoastal, or
ɜsel belongs (steam, motor, sail, or barge), the date and place of the shipment
n, and the rating (capacity in which employed) then held by such seaman.
ɔntinuous discharge books or certificates of discharge shall contain no reference
ɯan. The shipping commissioner shall issue such certificate of discharge and
ɦich certificate shall be signed by the seaman to whom it is issued and the
ɜessed by such shipping commissioner.
, Supp. IV 643 (k)) Where vessels are required to sign on and discharge the
· and no shipping commissioner is appointed or is available the functions and
nd (e) of this section to be performed by such shipping commissioner may be
ɔllector of customs; and where vessels are not required to sign on and discharge
ɜsioner the duties and functions required by subsections (d) and (e) of this
pping commissioner shall be performed by the master of such vessel. Any
ɜ duties or functions shall be fined in the sum of $50 for each offense.

he application of the master of any vessel to a consular officer to discharge a
ɲy seaman for his own discharge, if it appears to such officer that said seaman
nt or is entitled to his discharge under any act of Congress or according to the
time law as recognized in the United States, such officer shall discharge said
of said vessel, before such discharge shall be made, payment of the wages which
ɯo payment of extra wages shall be required by any consular officer upon such
ɔrovided in this act.

mɪssioner.

shipping commissioner shall hear and decide any question whatsoever between
ɜr, and any of his crew, which both parties agree in writing to submit to him;
all be binding on both parties, and shall, in any legal proceedings which may be
ɜrt of justice, be deemed to be conclusive as to the rights of the parties. And
official seal of a commissioner purporting to be such submission or award shall

FILED
MAR 5 1942
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

No. 951

STANDARD OIL COMPANY OF NEW JERSEY,
Petitioner,

against

OLAF JORGENSEN, JAMES J. SHEA, VASCO CANTOS and GUNNAR HANSON,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

WILLIAM L. STANDARD,
Counsel for Respondents.

LOUIS H. RUBINSTEIN,
of Counsel.

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Supreme Court of the United States

STANDARD OIL COMPANY OF NEW JERSEY, Petitioner, *against* OLAF JORGENSEN, JAMES J. SHEA, VASCO CANTOS and GUNNAR HANSON, Respondents.	No. .....

RESPONDENTS' BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

Statement

The case was tried in the Municipal Court, and judgment was entered in favor of the respondents, amounting in all to the sum of $342.94 (R. 6). The Appellate Term affirmed (R. 91) and thereafter denied a motion made for leave to appeal further. An additional application was then made by petitioner to the Appellate Division, which consented to review the case (R. 93). On appeal to that Court however, the determination of the Municipal Court was again affirmed (R. 99).

A further motion was then made by petitioner for leave to appeal to the Court of Appeals, but said application was also denied (R. 98), and it subsequently filed a petition in this Honorable Court praying for a Writ of Certiorari.

Facts

Plaintiffs-respondents are all seamen, who signed on as members of the crew of an American-flag tanker, the "W. C. Teagle", in the port of New York, on or about October 17,

1939 (R. 31-2). The articles were signed before a Shipping Commissioner (R. 10), and called for a voyage on:

> "the S. S. 'W. C. Teagle' * * * now bound from the port of N. Y. to Cartagena, Colombia, Montreal, Canada, and such other ports and places in any other part of the world as the master may direct, and back to a final port of discharge in the United States, for a term not exceeding twelve calendar months" (Plaintiffs' Exhibit Number 1, R. 48).

As the master himself admitted, at the time the articles were signed it was undoubtedly within the contemplation of the parties that the "other ports and places in any part of the world as the master may direct" referred to waters adjacent to Europe, including the Mediterranean and Black Seas (R. 47). The articles themselves made provision for extra payment in the event the vessel would sail in those waters (Plaintiffs' Exhibit Number 1).

Conditions in the maritime industry were such, at the time, that a seaman, in order to obtain employment, had to enter his name on the hiring hall list, and his name was then generally reached only after a two month waiting period (R. 16).

At the time of signing on, none of the members of the crew was advised that, in fact, the owner of the vessel, the petitioner herein, had obtained approval from the U. S. Maritime Commission to transfer its vessel to Panamanian ownership and registry as early as September 29, 1939, i. e., about three weeks before the outset of the voyage. Nor were they advised that when the vessel would arrive at Canada, on November 13, 1939, i. e., less than a month after signing on, their voyage would end at Montreal, Canada, and that they would be discharged (R. 13).

Accordingly, after signing the shipping articles, the members of the crew entered into their respective duties and the vessel proceeded from New York to Cartagena, Colombia, and then to Montreal, Canada (R. 36).

In the meantime, on November 4, 1939, the Neutrality Act (which had been under discussion by Congress long prior to the commencement of the voyage) had finally been passed, prohibiting the undertaking by American vessels of new voyages bound for war zone areas, although expressly leaving unaffected by this new legislation voyages already begun prior to the passage of the Act (Section 245j-1, subdivision (k) of Title 22 of the United States Code).

At Montreal, Canada the crew was advised that the vessel had been "sold" and that there was a change of registry to the Panamanian flag (R. 12), and that for this reason their voyage was at an end (R. 36). The "sale" had been made to the Panama Transport Co. (R. 36), and, as petitioner's Assistant Manager of Marine Operations admitted, the Panama Transport Co. is a subsidiary of petitioner, Standard Oil Company of New Jersey (R. 68-69).

Although the members of the crew protested against this discharge, some being actually taken off the vessel by force (R. 45), they were transported back to New York, where they arrived the next day, November 14, 1939, and were there paid the wages which they had earned (R. 14). It was conceded by the attorney for the steamship company, at the trial, that the seamen protested at the time of signing off (R. 29).

The Courts below held that the Neutrality Act, by its terms, had no application to any voyage entered into prior to the enactment of that law, and that, therefore, the seamen fell squarely within the provisions of Revised Statutes, Section 4527, in that subsequent to signing the shipping articles they were afterwards discharged:

(a) Before one month's wages were earned;

(b) Without fault on their part justifying their discharge; and

(c) Without their consent.

Therefore, they were entitled to an additional month's wages under the Statute.

In the points which follow, the undersigned will endeavor to show that the rulings in the Courts below was in all respects correct; that the points raised by Petitioner are without real merit, and that certiorari ought therefore not to be permitted.

A. A consideration of the nature of Section 4527 of the Revised Statutes (46 U. S. C. A. 594).

By a careful examination of Section 4527 of the Revised Statutes (46 U. S. C. A. 594 [text at pp. 1-2, *supra*]), we find that where, as here, seamen have signed shipping articles and are afterwards discharged:

(a) Before one month's wages are earned;

(b) Without fault on their part justifying such discharge; and

(c) Without their consent;

they are entitled to receive an extra month's wages. It is respectfullly submitted that in this case all of these requirements were met.

In enacting this section Congress had in mind the fact that seamen are often unemployed for great periods of time; that when they finally do get employment they must frequently leave the lodging houses in which they live, even though they may already have paid their rent for the entire week; and that the seamen must usually then go through the trouble of packing all their personal belongings to take them on board ship. When a seaman is, therefore, offered a berth aboard a vessel which contemplates a short voyage, he may, and often does, decide that the trouble and expense may not be worth the wages which could be earned on such short voyage—and he usually prefers to wait until an opportunity presents itself to work aboard a vessel offering longer employment.

Congress, therefore, provided by Section 4527 of the Revised Statutes that where a shipowner induces seaman to work aboard his ship, and represents that they are undertaking a foreign voyage to a specific port, he may not thereafter discharge them without their consent, and without any fault on their part, unless they had already earned one month's wages. In short, it is declared to be a policy that where a shipowner does violate this provision of law he is required to pay the wrongfully discharged seamen an additional month's wages in lieu of damages.

The payment of such an extra month's wages in cases where seamen are wrongfully discharged has thus, by law, become part of the operating expense of every shipowner.

In the case of *Arwine* v. *Alaska S. S. Co.,* 65 P. (2d) 695, 189 Wash. 437 (1937), the Court had occasion to consider the effect of Revised Statutes, Section 4527, in awarding the crew a month's wages. The Supreme Court of Washington, by Mr. Justice Robinson, stated, at page 696:

> "We think, however, that the statute does not provide a penalty, but merely fixes the seaman's measure of recovery when his contract of employment is breached without his fault. The language seems too clear and definite to admit of any other construction. In any event, it was so constructed in *The Steel Trader,* 275 U. S. 388, reported in 48 Sup. Ct. 162, 72 L. Ed. 326, under the *U. S. Steel Products Co.* v. *Adams,* and we are bound by that decision.
>
> "The statute under discussion is one of a number of Federal statutes giving seamen rather unusual rights and remedies with respect to wages. * * *
>
> "These wage statutes were enacted upon the theory that seamen needed special protetcion and they have been liberally construed in their favor for the same reason. In fact, at the time of their enactment, seamen were regarded as being in need of a kind of guardianship, because seamen are repeatedly spoken of in text books and law reviews as 'wards of the admiralty'. It is true that seamen have since acquired other and very efficient guardianship, particularly as

regards wages, but these statutes are still in effect and must be enforced according to their original intent."

The statute was also considered in *Calvin* v. *Huntley,* 178 Mass. 29, 59 N. E. 435 (1901). (This decision has been expressly approved and quoted from the United States Supreme Court in *The Steel Trader,* 275 U. S. 388, 48 Sup. Ct. 162 [1928].) In that case the Supreme Judicial Court of Massachusetts held that Revised Statutes, Section 4527 is not a penalty and that, therefore, an action to recover same may be commenced in the State Courts. The Court here also points out that the statute fixes one month's wages as damages for the owner's breach of contract, Hammond, *J.,* stating at page 435:

"It is to be observed that the language of the section is not that ordinarily used in a penal statute. Neither the word 'penalty' nor 'forfeiture' is in it. Moreover it does not provide punishment for the commission of a criminal offense, nor for the neglect of a statutory duty, nor even for the neglect of a duty in the performance of which the public as such, may be supposed to have an interest. It speaks not of punishment, but of compensation. Its object is to protect the seaman from loss rather than punish the master for discharging him. The remedy is given to the seaman alone and its plan, perhaps, is to furnish a plain, clear and well-drafted rule of damages as between him and the master, for a breach of contract in which the seaman and owner are the only persons interested.

* * * * * *

"Nor does the rule of damages seem unreasonable. The shipping contract calls upon the seaman to go to various places, sometimes far from home and it may be, for instance, as in this case was the actual fact, that he may be discharged in a port distant from that where he signed the articles, or where he cannot immediately secure any other employment on board ship or elsewhere and that in all fairness he should recover more than the amount due him for wages earned."

B. Revised Statutes, Section 4527 (46 U. S. C. A. 594) and Revised Statutes, Section 4582 (46 U. S. C. A. 684) are not mutually exclusive, nor is the latter section applicable to this case.

Petitioner relies upon Revised Statutes, Section 4582 (46 U. S. C. A. 684), which compels a master to provide a seaman with passage home whenever a vessel of the United States is sold in a foreign country and her company is discharged there. That section reads as follows:

> "Wages on discharge in case of sale. Whenever a vessel of the United States is sold in a foreign country and her company discharged, it shall be the duty of the master to produce to the consular officer a certified list of the ship's company, and also the shipping articles, and besides paying to each seaman or apprentice the wages due him, he shall either provide him with adequate empoyment on board some other vessel bound to the port at which he was originally shipped, or to such other port as may be agreed upon by him, or furnish the means of sending him to such port, or provide him with a passage home, or deposit with the consular officer such a sum of money as is by the officer deemed sufficient to defray the expenses of his maintenance and passage home; and the consular officer shall indorse upon the agreement with the crew of the ship which the seaman or apprentice is leaving the particulars of any payment, provision, or deposit made under this section. A failure to comply with the provisions of this section shall render the owner liable to a fine of not exceeding $50."

Petitioner claims that the section just quoted is applicable to this case and that, having allegedly complied with it, there is no further obligation on its part.

To begin with, there is no language in Revised Statutes, Section 4582 which states that compliance with that section relieves the master from any obligations which he may have under Revised Statutes, Section 4527, and it is important to bear that fact in mind.

The rule of construction applicable to this case, was stated by this court in *U. S. v. Tynen,* 11 Wall. 88, 92, 20 L. Ed. 153, as follows:

> "When there are two acts on the same subject, the rule is to give effect to both if possible."

However, aside from that fact, it is respectfully submitted that Revised Statutes, Section 4582, relied on by the steamship company, has no application whatever to this case, while, on the other hand, Revised Statutes, Section 4527, relied on by the seamen, does apply. Revised Statutes, Section 4582, has no applicability to the situation herein for the following reasons:

1. There was no discharge and pay-off in a foreign country before a consular official, as is required by the terms of that section.

In the instant case, while the crew's voyage was terminated at Montreal, Canada, the actual discharge and pay-off occurred when the seamen returned to New York. Since there was no discharge and pay-off before a consular official in Montreal, the section relied on by the defendant-appellant has no possible application to the situation herein.

That a discharge in a domestic port, as was the case herein, on a sale of a vessel, does not deprive the crew of extra wages under Revised Statutes, Section 4527, see *The Great Canton,* 299 F. 953 (E. D., N. Y., 1924). In that case not only was the crew given an extra month's wages under Revised Statutes, Section 4527, but, in addition, they were awarded the penalties provided by Revised Statutes, Section 4529, to wit, two days' pay for every day they were made to wait before receiving this extra month's wages.

2. Revised Statutes, Section 4582, which gives only return transportation on the sale of a vessel in a foreign port, has, since early times, been limited to these instances where the discharge in the foreign port was with the consent of the seamen, while here the discharge was without the consent of the seamen.

One of the earliest cases to arise under the section was *Pool* v. *Welsh,* Fed. Cas. No. 11269 (D. C., Pa., 1830). In that case an American crew was discharged in a foreign port with its consent, and the vessel was sold, the master having found the ship not sufficiently seaworthy for his purposes. The consul offered to send the crew back on another vessel, working their way, but the seamen refused the offer claiming to be entitled to extra wages under Revised Statutes, Section 4582, as it then existed. The Court pointed out that had this been a case of a discharge without the seamen's consent, they would have been entitled to wages, etc., to the end of the voyage, as damages, on the authority of Judge Story's decision in *Emerson* v. *Havland,* Fed. Cas. No. 441, but that since the discharge here was with their consent, they came within the section and were entitled to extra wages as provided therein.

See *Heynsohn* v. *Merriman,* 1 Fed. 728 (S. D., N. Y., 1880), where it was also pointed out that Revised Statutes, Section 4582 only applied to a case where a seaman was discharged in a foreign country with his consent, as distinguished from a discharge without the seaman's consent. In that case, Judge Choate stated, at page 729:

> "The defendant claims that the payment at Valparaiso works a satisfaction of the libellant's claim for wages under Rev. St. Section 4582. But I do not perceive that that section has any bearing on the case. By it a master is required, on discharging a seaman who is a citizen of the United States with his own consent, in a foreign country, to produce to the consul the wages due, and three months' extra wages. That is

> if the defendant had, with the consent of the libellant, discharged him at Buenos Aires, he must have paid to the consul there the wages due up to that time and three months' extra wages, and this would have released him and the vessel from further liability under the contract.
>
> "* * * But there is no pretense that the libellant was discharged with his own consent, and therefore the statute can have no possible application to effect the release of the vessel or the master."

Since the seamen here were discharged and paid off in a domestic port without their consent, the only section which applied was Revised Statutes, Section 4527 and not Revised Statutes, Section 4582.

3. There was no bona fide sale within the meaning of Revised Statutes, Section 4582.

Revised Statutes, Section 4582 was obviously intended to give a seaman return transportation where his employer ceased to own the vessel due to a bona fide sale and discharge in a foreign country. Can it be said that the transfer of the "W. C. Teagle" by the Standard Oil Company of New Jersey to its subsidiary, for the purpose of avoiding the provisions of the Neutrality Act, constitutes a bona fide sale?

An examination of Moody's Industrial, 1941, under the heading "Standard Oil Company" discloses that at pages 2904-2905 it is stated that the Standard Oil Company of New Jersey owns 100% voting control of the "Panama Transport Co.—tankers", one of the many companies listed as those in whom the defendant-appellant has such control. At page 2906 of that work the following also appears under the same general heading of "Standard Oil Company":

> "Marine Transportation Department—
>
> "The tanker fleet at the end of 1939 comprised 205 vessels totalling 2,186,530 tons (approximately 13% of

the tanker tonnage afloat). The volume of oil handled by the company's own and its chartered ocean-going vessels during 1938 total 260,000,000 barrels.

"A break-down of the consolidated subsidiaries' ocean, coastal and lake tankers as to countries of registry on December 31, 1937, is as follows (In 1939, certain older tankers were transferred to foreign registry[1]):

Flag	Tankers	Deadweight Tons
Dutch	3	36,540
Belgian	2	28,425
Danish	4	44,335
Norwegian	2	15,690
Panamanian	28	422,020
German	4	61,190
French	5	32,165
Italian	6	51,320
Venezuelan	7	35,942
Argentine	5	13,955
United States	69	916,784
British	65	447,499
		2,105,865

"Ownership of the above vessels was distributed among a number of subsidiaries. U. S. flag tankers were owned by Standard Oil Co. of New Jersey. Panama flag tankers were owned by Panama Transport Co. British flag tankers were owned: 20 by Imperial Oil Shipping Co., Ltd., 23 by Lago Shipping Co., Ltd., 6 by the British-Mexican Petroleum Co., Ltd., and 1 by International Petroleum Co., Ltd."

Moody's Industrial also shows that aside from the Panama Transport Co., the petitioner also has voting control in the other companies mentioned as those who nominally own its foreign flag tankers.

It is respectfully submitted that where, as here, a gigantic corporation, such as petitioner herein, uses smaller

[1] One of these transfers was that of the "W. C. Teagle", in the instant case, to Panamanian registry.

corporate structures as mere pawns, retaining absolute control over them and reaping all the profits of their transactions, and where such dominating corporation goes through the mechanics of transferring an asset to the subsidiary, under circumstances as existed herein, and without any showing or proof of consideration, that such a transfer does not constitute a bona fide sale within the meaning of Revised Statutes, Section 4582.

Text-book writers and cases have recently tended to recognize the piercing of the corporate veil as between parent and subsidiary corporations in circumstances such as appear herein.

> *Stevens on Corporations* (1936), pp. 16-18;
> *Maraweetz, Private Corporations,* 2d Ed., Sec. 1;
> *U. S.* v. *Walter,* 263 U. S. 15, 44 Sup. Ct. 10 (1923);
> *Taylor* v. *Standard Gas and Electric Co.,* 306 U. S. 307, 59 Sup. Ct. 543 (1939);
> *N. L. R. B.* v. *Jones & Laughlin Steel Corp.,* 301 U. S. 1, 57 Sup. Ct. 615 (1937);
> *N. L. R. B.* v. *Hearst, et al.,* 102 F. (2d) 658 (C. C. A. 9th, 1939).

While we realize that decisions of the National Labor Relations Board are not binding on this Honorable Court, nevertheless it may, perhaps, not be amiss to point out, that in construing employer-employee relationships, the Board, in *Maryland Distilling, Inc.,* 3 N. L. R. B. 176 (1937), plainly stated its disregard for the corporate entity as follows:

> "The resort to the corporate fiction of the holding company device, does not hide the real picture presented by the respondents and their business, namely, that of a single enterprise with unitary control doing business of national, indeed of international, scope and ramifications" (p. 182).

See also:

Union Drawn Steel Co., 10 N. L. R. B. 868 (1938), enforced 109 F. (2d) 587 (C. C. A. 3d, 1940).

We have thus seen that the two sections in question are not inconsistent, and that Revised Statutes, Section 4582 does not apply to this case because (1) there was no discharge and pay-off in a foreign country before a consular official, (2) the discharge was not with the consent of the seamen, and (3) after the change of registry the true owner of the vessel was still the Standard Oil Company of New Jersey, i. e., there was no bona fide sale.

C. Transporting the men back to New York by rail or bus was not a performance of the contract of employment.

In the instant case, the members of the crew of the "W. C. Teagle" were only given the wages which they had earned and were sent back to New York, where they arrived the following day. They were thus not compensated in any way for the damages which they sustained, for, as we have seen, under the contract, the vessel was bound to engage in a voyage from New York to Cartagena, Columbia, then to Montreal, Canada, "and such other ports and places in any part of the world as the master may direct and back to a final port of discharge in the United States. * * *"

By the express terms of the shipping articles the men were to be given work and the opportunity to earn wages on board the vessel until it reached its final port of discharge in the United States, after making the voyage contemplated. By "final port of discharge in the United States" is not meant a place where the seamen are discharged, but, rather, a place where the cargo is discharged.

The meaning of "final port of discharge in the United States" is defined in *Schermacher* v. *Yates*, 57 F. 668

(D. C., E. D., N. Y., 1893), where District Judge Benedict states, at page 669:

> "By the terms of the articles, the crew could only be discharged at 'a final port of discharge in the United States.' These words are to be construed in view of the language employed in Section 4530 of the Revised Statutes, where it is provided that a seamen is entitled to his wages 'as soon as the voyage is ended and the cargo and ballast fully discharged at the last port of delivery.' So construed, the last port of delivery where either cargo or ballast was discharged, if within the United States, would be a final port of discharge within the meaning of the articles signed by the libellants."

Here, the "W. C. Teagle" did not return to the United States with its crew and discharge cargo, but, instead, a new crew was engaged at Canada and then it proceeded on its way. Therefore, there undoubtedly was a clear breach of the provisions of the contract, entitling the respondents to damages—and those damages are fixed by statute at one month's wages, as shown above.[2]

Petitioner relies upon one case to prove that it was sufficient that the seamen were returned to the United States without more. That case, *Johnson* v. *Standard Oil Co. of N. J.*, 1940 A. M. C. 1145 (D. C. Maryland), is easily distinguishable by reason of the fact that the extra month's wages sought there under Revised Statutes, Section 4527, was disallowed for the sole reason that there the seamen had undertaken a coastwise voyage, the setcion only applying to foreign voyages by the express provisions of the

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[2] That in the past, seamen wrongfully discharged, have not been limited merely to the one month's extra wages, which must be paid under Revised Statutes, Section 4527, we can point to at least two cases. In the first of these, *Hill v. Sachen*, 59 Fed. 790 (S. D., N. Y., 1894), seamen wrongfully discharged were awarded transportation in addition to the statutory extra month's wages. In the second case, *The Donna Lane* (D. C., Wash., 1924), 299 Fed. 977, seamen wrongfully discharged were also awarded one month's extra wages, together with transportation back to the port of shipment, District Judge Cushman stating, at page 982:

> "It does not follow because Congress has made this provision for a month's extra wages, the seaman is entitled to nothing more than a month's wages when mistakenly discharged by a consul at the instance of the master."

Shipping Commissioner's Act. Since the statute did not apply, it was incumbent on the crew to prove the extent of monetary damage it had sustained, which was not done. Transportation, wages and maintenance to a final port of discharge in the United States could not be awarded by the Court there as an item of damage, since those items had already been furnished to those seamen on the trip back. Since the statute was not applicable, and since there was no proof of damage, the Court could not make any award in favor of the crew. The statement of that Court to the effect that there had been no breach, must be considered in the light of the facts of that case. Actually there can be no doubt but that the failure of the vessel to complete its voyage by returning to the United States, does in fact constitute a breach of contract.

Petitioner urges that the contract was not breached but was fulfilled by merely providing transportation back to New York. However, it is clear from a reading of the articles of employment, that the contract could only have been fulfilled by the seamen completing their employment on board their vessel, and by the vessel completing the voyage that it had undertaken, by returning with its cargo to a port of final discharge in the United States.

In the case at bar there was no need to prove damages because once the breach is established, where a foreign voyage is involved, Revised Statutes, Section 4527 sets the measure of recovery as one month's extra wages; and that would have been the recovery regardless of whether the seamen were deprived, by the breach, of a voyage which normally would have taken six months, or a voyage which would have taken merely another half a day.

Merely giving the seamen wages for the extra day, until they reached New York, did not compensate them for the damage which they sustained by reason of the loss of the longer voyage, and did not comply with the requirements of Revised Statutes, Section 4527, which places upon the ship-owner, as an additional operating expense, the duty of paying its seamen an additional month's wages for wrongful discharge.

D. Conclusion.

The trial Court's ruling in favor of the seamen meant that it was satisfied that the respondents were discharged before one month's wages were earned, without fault on their part justifying such discharge, and without their consent. Therefore, pursuant to the express provisions of Section 4527 of the Revised Statutes, each member of the crew became entitled to receive one month's wages (in addition to the wages which he had earned, and which were paid to him).

From early times Congress has adopted a protective attitude toward seamen. Legislation enacted with reference to their service on board vessels, was intended for their protection and for the enlargement of their rights. It would, therefore, be in contravention to the policy of the law, as it has been throughout the ages, to now hold that a master may engage a crew in New York, under articles which clearly showed that a long foreign voyage was contemplated (thereby inducing the men to pack their belongings, give up their lodgings and their places on the hiring hall list), and then discharge the crew about three weeks later, in violation of the express provisions of the contract of employment.

Since the discharge herein, therefore, was before a month's wages had been earned, without any fault on the part of the crew, and in contravention of the articles, it falls squarely within the provisions of the revised statutes, Section 4527, and, therefore, there being no valid defense, review by certiorari should not be allowed.

Respectfully submitted,

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(30)

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OCTOBER TERM, 1941

No. 951.

STANDARD OIL COMPANY OF NEW JERSEY,
Petitioner,

against

OLAF JORGENSEN, JAMES J. SHEA, VASCO CANTOS and GUNNAR HANSON,
Respondents.

PETITIONER'S REPLY BRIEF.

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PETITIONER'S REPLY BRIEF.

If anything, the respondents' brief emphasizes the importance of the federal questions involved by showing the confusion which exists concerning the construction and application of the Sections 4527 and 4582 and the meaning of the shipping articles.

However counsel for the respondents misinterprets some of the testimony; he refers to other testimony which was stricken from the record; he makes statements of fact unsupported by the record; in alluding to Section 4527, he ignores the critical provision of the Section; and some of the cases which he cites do not support the propositions for which he claims they stand.

Because of these features of respondents' brief it is thought that this reply is necessary. This is particularly so because in going beyond the record counsel falls into serious error in his attempt to describe the corporate affiliations of the defendant, which in any event are entirely irrelevant.

The master did not testify that a lengthy voyage was contemplated as the respondents assert. The record shows that the master said nothing more than that under the articles "it was possible" that the vessel might have visited distant waters (R. 47). In this connection it should be noted that the articles *permitted* but did not *compel* the vessel to go further than Montreal.

The assertion that seamen are required to wait long periods for employment refers to testimony that was stricken from the record by the trial court (R. 16). This, of course, is irrelevant. Furthermore it is refuted in part by the record which reveals that two of the respondents (James J. Shea and Gunnar Hanson) had been working continuously for two months previously to the commencement of the voyage in question (R. 62, 63). None of respondents testified at the trial and there is no evidence that any of them had difficulty obtaining work before or after the employment in question.

Although permission of the United States Maritime Commission to sell the vessel was obtained the record does not disclose when this was done. Counsel's assertion that the permission was obtained before the commencement of the voyage is pure assumption on his part.

The respondents urge that a lengthy voyage was contemplated. They imply that they undertook the voyage in the hope that it would be lengthy. These contentions are not supported by the record. A long voyage was permissible. It was not essential to the fulfillment of the articles.

The respondents did not testify at the trial. There is no evidence as to what prompted them to accept this employment. Two of them had worked on the previous voyage (R. 62, 63). Furthermore the trial court consistently refused to admit testimony purporting to explain

the terms of the articles, and properly so under the parol evidence rule (R. 47, 48, 49, 50).

If the vessel had returned to New York from Montreal before one month and there discharged the crew, certainly the seamen would have no rights under Section 4527. That they had hopes that the voyage would be longer would not have altered the situation.

Respondents set forth what they conceive to be the only three elements necessary to the application of Section 4527. They ignore a fourth element, which this court considered paramount in *The Steel Trader,* 275 U. S. 388. This fourth element is that the discharge must be improper and amount to a breach of contract on the part of the shipowner.

The respondents argue that the purpose of Congress in enacting Section 4527 was to compensate seamen whose employment lasts less than a month because of the inconvenience entailed in accepting the employment. Speculation concerning the purpose of Congress is not necessary. The language of the Section plainly shows that Congress intended merely to provide a liquidated measure of compensation when a seaman's contract of employment is "breached" before the expiration of one month. This court has so held in *The Steel Trader, supra.*

The respondents argue that Section 4527 must be applied because petitioner failed to comply with Section 4582. This reasoning is fallacious if the two Sections were intended by Congress to be mutually exclusive as petitioner contends. If petitioner had failed to comply with Section 4582 in circumstances where it was applicable, this failure would not render Section 4527 applicable if that Section does not apply in the case of the sale of a vessel in a foreign port. The seamen's remedies in such case would be under Section 4582.

The respondents assert that there was no "discharge" or "pay-off" in a foreign port and therefore Section 4582 did not apply, although admittedly the vessel was sold in a foreign port and the crew was discharged. It is not necessary to examine with nicety the precise connotation of the terms "discharge" and "pay-off" and ascertain where either or both occurred. The application of the statute is not dependent on the place where the seamen are "discharged" or "paid-off" but solely upon the "sale" of a vessel at a foreign port and the consequent discharge of the crew. Indeed one of the alternative duties of a shipowner under the statute is to return the seamen to the port at which they were shipped.

It is contended that Section 4582 does not apply because the seamen did not consent to their discharge. In petitioner's main brief this argument was anticipated and the cases cited by the respondents were discussed.

Finally counsel for the respondents attempts to discredit the defendant by drawing inferences from his erroneous understanding of the corporate affiliations of the defendant. Counsel is totally confused as to these relations. He has misread Moody's Industrial, 1941, which was not in evidence. Since he has departed from the record in an attempt to discredit the petitioner and the good faith of the sale of the vessel it is hoped that the court will indulge a similar departure from the record by the petitioner to refute the erroneous conclusions put forth.

The title of the petitioner is "Standard Oil Company of New Jersey". It is a Delaware corporation. Its stock is owned by a corporation bearing the name "Standard Oil Company". This latter company is a New Jersey corporation.

The petitioner (Standard Oil Company of New Jersey) owns no stock of Panama Transport Company. The stock

of Panama Transport Company is owned by "Standard Oil Company" not the petitioner herein. Consequently the petitioner is not the parent company of Panama Transport Company and therefore the sale of the vessel was not from a parent company to a subsidiary. There is no evidence to support the implication by counsel for the respondents that there was anything sinister in the sale of the vessel from the petitioner to Panama Transport Company.

Respondents contend that the phrase in the articles "and back to a final port of discharge in the United States" means a port where cargo or ballast is discharged.

A reading of *Schermacher* v. *Yates,* 57 Fed. 668, will show that the court considered that a final port of discharge is one where something is done which shows an intention to terminate the voyage. The discharge of cargo or ballast is merely evidence of such intention. Obviously it cannot be the criterion for determining the termination of a voyage in all cases, otherwise it would not be possible to terminate a voyage of a vessel which did not carry cargo or ballast.

The use of the word "discharge" in the articles must be understood to refer to the discharge of the seaman and not confused with the discharge of cargo. In various statutes relating to seamen, Congress has used the term in referring to the termination of seamen's employment. In Section 4529 of the Revised Statutes it is provided that, as to foreign voyages, a seaman is entitled to his wages "within twenty-four hours *after cargo has been discharged,* or within four days *after the seaman has been discharged,* whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of *his discharge* on account of wages a sum equal to one-third part of the balance due him". Indeed Section 4527 speaks of seamen who have been *improperly discharged.* Shipping Commissioners are

empowered to superintend seamen's engagement and *discharge*. Section 4508 of the Revised Statutes. Finally the use of the word "discharge" in a contract of employment of seamen can have no logical reference to cargo or ballast. It is submitted that the *Schermacher* case, *supra*, merely refers to the discharge of cargo or ballast as an evidence of the intention to terminate the voyage. The court did not say that this test would be conclusive in all cases.

Respectfully submitted,

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